

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

THE JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

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

Named Plaintiff and Class Representative Elena Botts, by Class Counsel, hereby moves this Court for preliminary approval of the Second Addendum to Class Settlement Agreement and Release, which is attached as Exhibit 1 to her concurrently filed Memorandum of Law, and for an Order directing notice to the 2,607 class members identified by Defendant after the fairness hearing of December 13, 2023, the Second Group of Additional Students.

Defendant does not oppose the relief sought herein.

Dated: March 29, 2024

Respectfully submitted,

ELENA BOTTS, *by her attorneys,*

/s/John Soumilas

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*Counsel for the Class*

**CERTIFICATE OF SERVICE**

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

Dated: March 29, 2024

/s/John Soumilas  
John Soumilas

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

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In support of her Unopposed Motion for Preliminary Approval of Second Settlement Addendum and Order Directing Notice to Second Group Additional Class Members, Named Plaintiff<sup>1</sup> and Class Representative Elena Botts, by Class Counsel, submits the following Memorandum of Law.

## I. INTRODUCTION

In the concluding phase of this class action matter, which this Court certified for settlement purposes on April 20, 2023, ECF 96, Named Plaintiff Elena Botts (“Botts” or “Plaintiff”) seeks the Court’s approval of the Parties’ Second Addendum to Class Action Settlement Agreement and Release (“Second Addendum”), *see* Ex. 1, that provides an additional \$2,000,023.25 in relief for the 2,607 members of the Second Group of Additional Students that Defendant Johns Hopkins University (“JHU”) identified after the administration of the first phase of the Parties’ settlement. The Parties’ settlement is now worth more than \$10.3 million in total.<sup>2</sup>

This Court has twice previously held that the Parties’ settlement is fair, reasonable, and adequate and otherwise satisfies the requirements of FED. R. CIV. P. 23(a), 23(b)(3), 23(e)(2), and applicable Fourth Circuit law. *See* ECFs 96, 100. On November 22, 2023, JHU apprised the Court of the existence of a final group of Class Members eligible for compensation under the Settlement

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<sup>1</sup> Unless otherwise noted, definitions of capitalized terms are found in Section 2 of the Second Addendum to Class Settlement Agreement and Release, Ex. 1.

<sup>2</sup> This result continues to compare favorably with recent COVID-19-related college closure settlements. *See, e.g., Porter v. Emerson College*, No. 1:20-cv-11897-RWZ, ECF 87 (D. Mass. Nov. 29, 2022) (final approval of \$2.06MM common fund); *Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526, ECF 79 (D.N.J. Sept. 22, 2022) (preliminary approval of \$1.3MM common fund); *D’Amario v. Univ. of Tampa*, No. 7:20-cv-03744, ECF 76 (S.D.N.Y. Oct. 18, 2022) (final approval of \$3.4MM common fund); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813, ECF 84 (S.D. Fla. Sept. 7, 2021) (final approval of \$2.4MM common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609, ECF 37 (D.N.H. Sept. 7, 2021) (final approval of \$1.25MM common fund); *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128, ECF 48 (E.D. Mo. May 11, 2022) (final approval of \$1.65MM common fund).

Agreement. ECF 104. At the fairness hearing concerning the second phase of this settlement on December 13, 2023, JHU further apprised the Court of the status of its efforts to identify the members of this group. *See* Ex. 2, Fairness Hearing Transcript, at 7:1-7. This Court ordered that this matter be kept open for the purpose of notifying Settlement Class members who had been inadvertently omitted from the original class list. ECF 110 at 2. The Parties have now completed their efforts to assure themselves that they have, in fact, identified the final group of Settlement Class members, the 2,607 members of the Second Group of Additional Students, as described in further detail below.

Plaintiff now submits the Second Addendum for the Court's approval and, because the relief provided to the Second Additional Students in the Second Addendum is identical in form and substance to that provided the Group of 8,603 and the Additional Students, urges this Court to find that the Second Addendum also falls within the range of reasonable approval and that notice should be directed to the Second Group of Additional Students.

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

## II. RECENT HISTORY OF THE LITIGATION<sup>3</sup>

### A. Identifying the Second Group of Additional Students

In its Report of Additional Class Members and Amendment to Class Settlement, JHU alerted the Court to the existence of students who had not been included in either the Group of 8,603 or the Additional Students, as supplemented by the Rider. *See* ECF 104. Extensive

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<sup>3</sup> The full history of this litigation, including details concerning the parties' mediation efforts, is detailed in the memoranda of law filed in support of Plaintiff's Motion for Preliminary Approval of Class Settlement and for Order Directing Notice, ECF 85-1, at 2-4, and Plaintiff's Unopposed Motion for Preliminary Approval of Settlement Addendum and Order Directing Notice to Additional Class Members, ECF 99-1, at 2-5.

investigation on the part of JHU and further discovery undertaken by the Plaintiff confirmed the existence of 2,607 such students. Ex. 3, JHU's Responses and Objections to Plaintiff's Fourth Set of Interrogatories, at 3. The Parties refer to these additional members of the Settlement Class as the "Second Group of Additional Students." Ex. 1 at § 2.23.

The Second Group of Additional Students was not identified earlier in this matter because they were not included in the "frozen" registration data, which JHU captures on the "census date" in the second week of each semester. Ex. 3 at 7.<sup>4</sup> If, as was the case here, students enroll in courses after the second week of the semester, for example, in certain structured modules within the Bloomberg School of Public Health and Carey Business School, their registration information may not be captured by poll conducted on the census date. *Id.*; Ex. 4, Supp'l Decl. of McDermott, at ¶ 8. The principal component of identifying the Second Group of Additional Students was thus expanding the "frozen" list of registered students from the census data using "live" registration data to ensure that every student who had a confirmed<sup>5</sup> enrollment in at least one in-person course during Spring 2020, regardless of when enrollment occurred, would be assessed for inclusion in the Settlement Class.

Tom McDermott, JHU's Associate Vice Provost for Financial Aid, noted that certain students who had inquired about their inclusion in the Settlement Class during the administration of the first phase of the Parties' settlement did not appear in the "frozen" registration data used to identify the Group of 8,603 and the Additional Students. Ex. 3 at 4, Resp. to Int. 16; Ex. 4 at ¶ 6. With the help of Elizabeth Cronin, Associate Director of JHU's Office of Institutional Research,

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<sup>4</sup> JHU generally considers this census date data comprehensive, and it serves as the basis for much of its reporting to the federal government and via Integrated Postsecondary Education Data Systems ("IPEDS"). Ex. 3 at 7, Resp. to Int. 17.

<sup>5</sup> A "confirmed enrollment" is any enrollment that is not dropped before the end of the applicable add/drop period. Ex. 4 at ¶ 6.

Mr. McDermott reviewed “live” registration data from JHU’s Student Information System (“SIS”), that includes all students who enrolled for at least one in-person during the Spring 2020 term, regardless of when that student enrolled. Ex. 3 at 5; Ex. 4 at ¶¶ 6-7. Mr. McDermott then applied the same, expanded payment search parameters and date range used to identify the Additional Students,<sup>6</sup> and identified 2,510 additional individuals who fall within the Settlement Class. Ex. 3 at 5; Ex. 4 at ¶ 9.

To confirm that its efforts were as complete as possible, JHU undertook a manual, file-by-file review of payment records for more than 4,400 *more* students with the assistance of an outside consultant, Financial Aid Services, LLC (“FAS”).<sup>7</sup> Ex. 4 at ¶ 10. Under the supervision and instruction of LaToya Thompson, Johns Hopkins’ Director of Student Accounts, FAS reviewed JHU’s payment records for an even longer period, July 1, 2019 to June 30, 2021, for these remaining students. Ex. 5, Decl. of Thompson, at ¶ 7. After Ms. Thompson and an internal JHU team of student account specialists completed an internal quality assurance review of FAS’ findings, she determined that 97 more students should be added to the 2,510 identified by the efforts of Mr. McDermott and Ms. Cronin. Ex. 5 at ¶ 9. Thus, in all, JHU 2,607 additional individuals through this multilayered approach.

**B. Preparation of the Second Addendum**

Upon completion of the Parties’ efforts to identify the Second Group of Additional Students and confirmation through sworn interrogatory responses of the comprehensiveness of JHU’s efforts, they prepared the Second Addendum.

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<sup>6</sup> This included all the payment transaction codes posted to student accounts from October 15, 2019 to June 12, 2020. Ex. 3 at 5.

<sup>7</sup> FAS has worked with JHU on numerous matters for nearly 14 years, including for interim financial aid staffing and Title IV assessments. Ex. 4 at ¶ 10.

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

### III. THE TERMS OF THE ADDENDUM

#### A. Identical Monetary Relief for the Additional Students

Pursuant to the Second Addendum, JHU agrees to provide an additional \$2,000,023.25 for the Second Group of Additional Students. Ex. 1 at 4.2. This amount was determined by dividing \$6,600,000, the grand total to which the Parties agreed to settle this matter when their understanding was that there were only 8,603 Settlement Class members, by 8,603, which yields a per-Class member amount of \$767.17, and multiplying it by the number of Second Group of Additional Students, namely 2,607.

JHU will deposit this sum into the Settlement Fund, which, less any amount the Court awards in attorneys' fees and costs, a Service Award, and class notice and administration expenses, will be automatically distributed on a proportionate, *pro rata* basis to the Second Group of Additional Students without the need for the submission of any claims, as in previous phases of this case. Ex. 1 at §§ 4.2.1, 5.1, 5.3, 5.3.1.

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

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

Thus, if the Court grants Class Counsel's anticipated requests for attorneys' fees and costs, a Service Award, and notice and administration expenses, and every Class member cashes his or her check or claims his or her settlement distribution electronically, Class Counsel estimates that the average amount that each Class member will receive will be approximately \$500, with Class members that paid 100% of Spring 2020 Semester tuition receiving a proportionately higher amount and Class members that paid less receiving a proportionately smaller amount. Thus, student class members in this final phase of the case will have an equivalent recovery to student class members in earlier phases of this case. *See* ECF 85-1 at 5, ECF 99-1 at 6.

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

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

**B. Identical Release for the Second Group of Additional Students**

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

**C. Identical Settlement Administration and Notice Plan for the Second Group of Additional Students**

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

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

**D. Identical Attorneys' Fees and Service Award**

The Second Addendum provides that Defendant will not oppose an application to this Court by Class Counsel for an award of attorneys' fees and litigation costs in an amount of up to one-third (1/3) of the replenished Settlement Fund, namely \$666,674.42. Ex. 1 at § 5.3. This is the same proportion that this Court previously approved, *see* ECF 96 at 1, ECF 109, and is well within the range of what courts within the Fourth Circuit have approved for counsel fees in Rule 23(b)(3) settlement fund cases. Moreover, it is the same portion of the Settlement Fund that Class Counsel sought as attorneys' fees and costs with respect to the Group of 8,603 and the Additional Students, ensuring parity among the three groups of Settlement Class members.

Further, Defendant will not oppose an application to this Court by Class Counsel for a service award to Named Plaintiff Botts of \$3,787.92 in recognition of her continued efforts in service to the Second Group of Additional Students. Ex. 1 at § 5.3. This amount, too, is directly proportionate to the additional settlement value created by the inclusion of the Second Group of Additional Students.

#### **IV. THE SECOND GROUP OF ADDITIONAL STUDENTS SHOULD BE CERTIFIED FOR SETTLEMENT**

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

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

Under Rule 23(a), one or more members of a class may sue as representative Parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative Parties are typical of the claims or defenses of the class; and (4) the representative Parties will fairly and adequately protect the interests of the class.

##### *1. Numerosity*

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

Encompassing 2,607 individuals, the Second Group of Additional Students is sufficiently numerous.



2. *Commonality*

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

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

3. *Typicality*

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

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

4. *Adequacy of Representation*

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

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

Class Counsel are nationally recognized class action practitioners. Ex. 6 (Francis Mailman Soumilas, P.C. firm biography). Attorney Courtney Wiener is similarly qualified.

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

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

1. *Common Questions of Law and Fact Predominate*

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

Resolution of the common issues of fact and law in this case will not only promote the efficient adjudication of these matters, it will dispose of them entirely. In identical fashion, Plaintiff alleges on behalf of the Second Group of Additional Students that Defendant breached its contract with them or, in the alternative, was unjustly enriched when it transitioned its in-person classes to a remote learning format and closed its campus in Spring of 2020 without any corresponding rebate of tuition and/or fees. Even if any individual issues of significance existed to complicate a trial in

this matter (they do not), because the Class is being certified for settlement purposes and not for trial, this Court “need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

As to superiority, class settlement is the most efficient means of adjudicating the disputes raised here. Separately litigating the common issues that bind the classes would be a practical impossibility, even assuming that all members of the Second Group of Additional Students had notice of their claims and it were economically feasible for them to pursue these claims independently. Simply put, “there is a strong presumption in favor of a finding of superiority” where, as here, “the alternative to a class action is likely to be no action at all for the majority of class members.” *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 396 (N.D. Ill. 2006). Furthermore, even if just a small fraction of the 2,607 members of the Second Group of Additional Students were to bring individual suits, the resolution of common issues in a single proceeding here would be infinitely more efficient than would be the separate adjudication of individual claims in separate lawsuits.

**V. THE ADDENDUM IS FAIR AND ADEQUATE**

After the analysis of the Rule 23(a) and (b) elements, the Court must then decide whether the proposed settlement is fair, reasonable, and adequate. Although pretrial settlement of class actions is favored, “Rule 23(e) provides that ‘a class action shall not be dismissed without the approval of the court.’” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations omitted). “To this end, ‘the role of the Court reviewing the proposed settlement of a class action under Fed. R. Civ. P. 23(e) is to assure that the procedures followed meet the requirements of the

Rule and . . . to examine the settlement for fairness and adequacy.” *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001).

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

**A. The Second Addendum Is Fair**

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

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

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

**B. The Second Addendum's Terms Are Adequate and Reasonable**

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

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

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

Thus, other courts considering similar tuition and fee class action settlements have found that settlement is appropriate in similar contexts. *See supra* note 2. This Court should find that this factor favors preliminarily approving the Second Addendum.

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

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

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

Because the Second Group of Additional Students has yet to receive notice of the Second Addendum, its members' reaction cannot yet be gauged. However, the reaction of the Group of 8,603 was overwhelmingly in favor of the settlement, as evidenced by only one objection, which this Court overruled, and 3 valid requests for exclusion. *See* ECF 103-2. The reaction of the Additional Students was also uniformly positive, with no requests for exclusion and no objections. *Id.* Moreover, notwithstanding their inadvertent exclusion from the original class list, no member of the Second Group of Additional Students has filed or is pursuing his or her own individual lawsuit for the claims that the Second Addendum would resolve here.

## **VI. THE PROPOSED NOTICE PLAN SATISFIES RULE 23**

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

and addresses of individual class members are available or can be found without imposing an excessive burden or cost, due process requires that those class members receive direct notice.

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

Class Counsel now proposes to execute an identical Class Notice Plan, which provides for individual, direct email and postal notice to each member of the Second Group of Additional Students. Ex. 1 at § 4.1.3. This Court found that the Class Notice Plan satisfied due process, ECFs 96, 110, joining a chorus of others that have universally accepted direct email and postal notice as an appropriate form of notice for class action settlements involving a monetary fund. *See, e.g., Brunson v. Louisiana-Pacific Corp.*, 81 F. Supp. 2d 922, 925-26 (D.S.C. 2011) (mailed and published notice were the “best notice practicable under the circumstances,” satisfying both state and federal class-action rules of procedure and constitutions); *In re MicroStrategy*, 148 F. Supp. 2d at 669-70 (mail and publication notice program was “tailored to reach as many members of the class as practicable and therefore meets the due process requirements of Rule 23”).

The proposed form of Notice, while nearly identical to the previous version approved by this Court, contains additional explanatory language addressing why the members of the Second Group of Additional Student was not included among the Group of 8,603 (Phase 1) and Additional Students (Phase 2) and how they were subsequently identified. *See* Ex. 1 at Ex. C, FAQ No. 1.

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

## VII. CONCLUSION

The Second Addendum provides a cash award to the 2,607 members of the Second Group of Additional Students affected by Defendant's decision to transition from in-person education to remote learning and to close its campus during the Spring 2020 Semester without providing appropriate tuition and fee refunds. In exchange, the Second Group of Additional Students will release all claims that may arise from Defendant's conduct during that period. The requirements of Rule 23(a) and (b) are and remain satisfied here, and the Class Notice Plan complies with Rule 23(e). Moreover, Named Plaintiff Botts and Class Counsel believe that the high degree of scrutiny and keen attention to detail that JHU applied to the additional "live" registration data used to identify the Second Group of Additional Students provides them with a satisfactory level of confidence that all members of the Settlement Class have now been identified. Accordingly, they respectfully request that the Court (1) grant preliminary approval of the Second Addendum; (2) approve the Class Notice Plan; and (3) schedule a Final Approval Hearing.



Dated: March 29, 2024

Respectfully submitted,

ELENA BOTTS, *by her attorneys,*

/s/John Soumilas

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John Soumilas (*pro hac vice*)

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

**CERTIFICATE OF SERVICE**

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

Dated: March 29, 2024

/s/John Soumilas  
John Soumilas

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

**SECOND ADDENDUM TO  
CLASS SETTLEMENT AGREEMENT AND RELEASE**

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This Second Addendum to the certain Class Settlement Agreement and Release (“Settlement Agreement”)<sup>1</sup> dated December 9, 2022 and filed at ECF 85-2 in the matter captioned *Elena Botts v. Johns Hopkins University*, No. 1:20-cv-01335-JRR, pending in the United States District Court for the District of Maryland (“Second Addendum”), is made and entered into by the Parties and their counsel as of March 29, 2024, and it is submitted to the Court for approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**1. RECITALS**<sup>2</sup>

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

WHEREAS, Defendant denied and continues to deny all allegations and claims asserted against it, but entered into the Settlement Agreement, the Addendum to the Class Settlement Agreement and Release dated July 31, 2023, and enters into this Second Addendum to avoid the risk, burden and expense of continued litigation;

WHEREAS, the Settlement Agreement, Addendum, and this Second Addendum were reached after the Parties exchanged voluminous discovery and documents and information, and are each the product of sustained, arm’s-length settlement negotiations and formal mediation;

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<sup>1</sup> Capitalized terms are defined in Section 2, *infra*.

<sup>2</sup> The Parties stipulate and agree that the certain Recitals set forth in the Settlement Agreement and Addendum are hereby deemed incorporated by reference as though set forth at length herein.

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

WHEREAS, the Court held a final approval hearing on December 13, 2023 and, on that date, finally approved the Addendum, as amended by the Rider, as to the Additional Students via the entry of an Order at ECF 110;

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

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

WHEREAS, confirmatory discovery undertaken by the Parties has confirmed a verified population of 2,607 additional individuals that had previously gone unidentified and that should be added to the Settlement Class (the “Second Group of Additional Students”);

WHEREAS, Defendant identified the Second Group of Additional Students through the use of expanded enrollment search parameters, including students who enrolled in Spring 2020 classes after the second week of the semester, the census date that had been previously used to identify the Group of 8,603 and the Additional Students, and by conducting a manual, file-by-file review of all remaining students identified using the expanded search parameters with the assistance of an outside consultant supervised by Defendant’s Director of Student Accounts;

WHEREAS, Defendant’s Director of Student Accounts validated the analysis performed to identify the Second Group of Additional Students through consultation with Defendant’s Institutional Research and Student Financial Services, concluding and confirming that the members of the Second Group of Additional Students fall within the parameters of the Settlement Class;

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

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

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

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

## **2. DEFINITIONS**

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

**2.1** “Additional Students” means the 2,248 members of the Settlement Class identified by Defendant after the parties entered into their Settlement Agreement as set forth in the Rider.

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



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

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

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

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

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

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

**2.9** “Defendant” means Johns Hopkins University.

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

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

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

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

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

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

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

**2.17** “Named Plaintiff” means Elena Botts.

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

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

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

**2.21** “Released Parties” means the Defendant and its respective past and present employees, parents and subsidiaries and affiliate corporations or other business entities, including

but not limited to their current members, officers, directors, employees, agents, representatives, contractors, vendors, resellers, suppliers, insurers, attorneys, successors and assigns.

**2.22** “Rider” means the certain Rider to the Addendum to Class Settlement Agreement and Release dated November 29, 2023 and filed in the Litigation at ECF 105.

**2.23** “Second Group of Additional Students” means the 2,607 members of the Settlement Class identified by Defendant in its response to Plaintiff’s Interrogatory No. 15 dated March 15, 2024.

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

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

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

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

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

### **3. PRELIMINARY APPROVAL**

#### **3.1 Preliminary Approval Order**

Concurrently with this Second Addendum, the Named Plaintiff shall file with the Court a Motion for Preliminary Approval of the Second Addendum; Approval and Direction of the Class

Notice Plan; and Appointment of the Settlement Administrator. The motion shall seek entry of an Order, attached as **Exhibit A**, that would:

- a) preliminarily approve this Second Addendum;
- b) approve the proposed Class Notice Plan, including the form of Notice substantially similarly to that attached as **Exhibit C**; and
- c) appoint the Settlement Administrator.

### **3.2 Certification for Settlement Purposes Only**

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

## **4. CLASS SETTLEMENT TERMS**

### **4.1 Class Notice Plan**

#### **4.1.1 Class List**

Defendant shall provide a list of the Second Group of Additional Students to the Settlement Administrator. The Named Plaintiff, Class Counsel, and Second Group of Additional Students hereby acknowledge and agree that Defendant is providing the information referenced in this Section to the Settlement Administrator solely for the purpose of effecting the terms of this Second Addendum, and that such information shall not be used, disseminated, or disclosed by or to any other person for any other purpose. If the settlement is terminated for any of the reasons identified in Section 7, the Settlement Administrator shall immediately destroy any and all copies of the information referenced in this Section. The provisions regarding the compilation and treatment of the list referenced above are material terms of this Second Addendum. The Parties and the

Settlement Administrator also agree to treat the list as “Confidential” under the terms of the existing Stipulated Confidentiality Order filed at ECF 22.

**4.1.2 Court Appointment and Retention of Settlement Administrator**

At the Preliminary Approval hearing, the Parties will propose that the Court appoint the Settlement Administrator, as defined above. The Settlement Administrator’s responsibilities shall include, but are not limited to, giving notice, obtaining new addresses for returned mail, maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Second Addendum, directing the mailing of payments to the Second Group of Additional Students, and any other tasks reasonably required to effectuate this Second Addendum. The Settlement Administrator will provide monthly updates on the status of disbursements and cashed checks to counsel for the Parties.

**4.1.3 Class Notice**

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

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

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

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

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

#### **4.1.4 Settlement Website**

The Settlement Administrator also will maintain the Settlement Website prior to the mailing of the Notice described above. The URL for the website will be: [www.JHUSpring2020Settlement.com](http://www.JHUSpring2020Settlement.com). The Settlement Website will post important settlement documents, such as the operative Complaint, the Notice, the Settlement Agreement, the preliminary and final approval orders concerning the Group of 8,603, the Addendum, this Second Addendum, and Class Counsel's filing relating to the preliminary and final approval thereof. In addition, the Settlement Website will include a section for frequently asked questions, and procedural information regarding the status of the Court-approval process, such as an

announcement when the Final Approval Hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payment will likely be mailed.

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

#### **4.1.5 CAFA Notice**

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

#### **4.1.6 Costs and Expenses**

Subject to Section 4.1.5, under no circumstances will Defendant have any payment obligations to the Named Plaintiff, the Second Group of Additional Students, or Class Counsel pursuant to this Second Addendum that exceed two million twenty-three dollars and twenty-five cents (\$2,000,023.25).

Within fourteen (14) days after Preliminary Approval, Defendant will advance twenty-five thousand dollars (\$25,000.00) to the Settlement Administrator to effectuate the Class Notice Plan, through a deposit at the same financial institution which will hold the Escrow Account. Defendant shall receive a full credit for this payment if and when the Settlement Fund is funded, as discussed in Section 5.

## **4.2 Settlement Consideration**

The Settlement Fund shall consist of two million twenty-three dollars and twenty-five cents (\$2,000,023.25). The Settlement Fund shall be used to make automatic payments to each member of the Second Group of Additional Students as set forth in this Second Addendum.

### **4.2.1 Calculation of Distributions to the Second Group of Additional Students**

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

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

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

## **4.3 Class Release**

### **4.3.1 Release of Claims**

Upon the Effective Date, each of the members of the Second Group of Additional Students who has not validly excluded himself or herself from the Settlement Class, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf,



acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever arising before the effective date of the settlement, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued which he or she ever had or now has resulting from, arising out of, or regarding Defendant's Spring 2020 Semester, including, but not limited to, Defendant's ceasing in-person education and transitioning to a remote format.

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

#### **4.3.2 Waiver of Unknown Claims; General Release**

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

#### **4.3.3 Binding Release**

Upon the Effective Date, no default by any person in the performance of any covenant or obligation under this Second Addendum or any order entered in connection with such shall affect

the dismissal of the Litigation, the *res judicata* effect of the Final Judgment and Order, the foregoing releases, or any other provision of the Final Judgment and Order; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Second Addendum shall remain available to all Parties.

#### **4.3.4 Opt-Out from Class**

##### **4.3.4.1 Requests for Exclusion**

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

Notwithstanding the foregoing, no person within the Settlement Class, or any person acting on behalf of or in concert or participation with that person, may submit a Request for Exclusion of any other person within the Class.

##### **4.3.4.2 Verification of Opt-Outs by Settlement Administrator**

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

#### 4.3.4.3 Effect of Opt-Out from Class

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

#### 4.3.5 Objections

Any member of the Second Group of Additional Student who has not opted-out in accordance with the terms above and who intends to object to this Second Addendum must file the objection in writing with the Clerk of Court no later than thirty (30) days prior to the Final Approval Hearing and must concurrently serve the objection on the Settlement Administrator, Class Counsel, and counsel for Defendant. The objection must include the following: (1) the Additional Student's full name, mailing address, and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees and all factual and legal support for that request; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector

intends to introduce into evidence at the Final Approval Hearing, as well as true and correct of copies of such exhibits; and (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

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

## **5. SETTLEMENT FUND**

### **5.1 Settlement Fund**

By the Funding Date, Defendant shall fund the Settlement Fund by depositing two million twenty-three dollars and twenty-five cents (\$2,000,023.25), less the amount provided for in Section 4.1.6, in the Escrow Account.

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

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

### **5.2 Settlement Fund Tax Status**

**5.2.1** The Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Subsection, including the "relation back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the

procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

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

**5.2.3** All (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund do not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this Subsection (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns (“Tax Expenses”)), shall be paid out of the respective settlement fund for which the income was earned or expense or cost incurred; in no event shall the Released Parties have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Administrator shall indemnify and hold the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Settlement

Administrator out of the Settlement Fund without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)); the Released Parties are not responsible therefore nor shall they have any liability with respect thereto. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out this Section.

**5.3 Attorneys' Fees and Costs, Service Award, and Other Expenses**

No later than forty-five (45) days prior to the Final Approval Hearing, Class Counsel shall make an application to the Court for an award of attorneys' fees and costs for their representation of the Second Group of Additional Students. That application will be posted to the Settlement Website by the Settlement Administrator within one (1) business day of its filing with the Court. The amount that will be requested by Class Counsel shall be no greater than one-third of the Settlement Fund, namely six hundred sixty-six thousand six hundred seventy-four dollars and forty-two cents (\$666,674.42), which application Defendant agrees not to oppose. No later than the time Class Counsel files the application above, Class Counsel shall provide to the Settlement Administrator a properly completed W-9 Form pertaining to Class Counsel.

No later than forty-five (45) days prior to the Final Approval Hearing, Named Plaintiff shall make an application to the Court for the Court's approval of a Service Award of three thousand seven hundred eighty-seven dollars and ninety-two cents (\$3,787.92) to be paid from the Settlement Fund, which award Defendant agrees not to oppose. No later than the time Class Counsel files the application above, Class Counsel shall provide to the Settlement Administrator a properly completed W-9 Form pertaining to the Named Plaintiff.

### **5.3.1 Payment Schedule**

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

In addition, before commencing distribution to the Second Group of Additional Students, the Settlement Administrator shall determine the funds necessary to cover the remaining costs of notice and administration that the Settlement Administrator has already incurred, and reasonably expects to incur, in completing the Class Notice Plan set forth in this Section. The Settlement Administrator shall submit that estimate to Class Counsel and Defendant's counsel for approval. Once approved, the Settlement Administrator should withhold the estimated amount from further distribution from the Settlement Fund to cover costs of notice and administration except that in no event shall the Settlement Administrator withhold more than an amount proportionate to the average, per-Class member amount expended in connection with notice and administration of the Settlement Agreement as to the Group of 8,603 multiplied by 2,607, the number of members of the Second Group of Additional Students. Solely by way of example and for the avoidance of doubt, if the total cost of notice and administration as to the Group of 8,603 was \$86,030.00, *i.e.*, the average, per-Class member cost of notice and administration was \$10.00, then the Settlement Administrator shall not withhold more than \$19,150.00 from the Settlement Fund for notice and administration as to the Second Group of Additional Students. Each of these costs, expenses, and distributions above should be borne from the Settlement Fund.

Within thirty (30) days after the Funding Date, the Settlement Administrator shall send the Class Member Payments out of the Settlement Fund to each member of the Second Group of Additional Students to (a) the last known mailing address reflected in the Class List or the updated address previously used during the Class Notice Plan set forth in Section 4.1.3, or (b) upon the member of the Second Group of Additional Student's affirmative election via the Settlement

Website, electronically to the email address provided by the Additional Student with his or her electronic payment election. The payment notices accompanying any paper checks shall notify the recipients that the checks must be cashed within sixty (60) days from the date on enclosed check and that the enclosed check shall not be valid after that date.

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

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

**6. ENTRY OF FINAL JUDGMENT AND ORDER**

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

- a) granting final approval of this Second Addendum, and directing its implementation pursuant to its terms and conditions;
- b) ruling on Class Counsel's applications for attorneys' fees and costs;
- c) ruling on Named Plaintiff's application for a Service Award;



- d) discharging and releasing the Released Parties, and each of them, from the Class Released Claims, as provided in Section 4.3;
- e) permanently barring and enjoining all members of the Second Group of Additional Students from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Class Released Claims;
- f) directing that the Litigation be dismissed with prejudice and without costs;
- g) stating pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Judgment and Order is a final, appealable order; and
- h) reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Second Addendum and the Final Judgment and Order as provided in Section 8.3.

#### 7. **TERMINATION**

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

- a) more than 10% of the members of the Second Group of Additional Students opt out of the Settlement Class;
- b) the Court fails to enter a Final Judgment and Order substantially consistent with the provisions of this Second Addendum;
- c) the settlement of the Class claims, or the Final Judgment and Order, is not upheld on appeal, including review by the United States Supreme Court;
- d) the Named Plaintiff, Class Counsel, or Defendant commit a material breach of the Second Addendum before entry of the Final Judgment and Order; or
- e) the entry of an order by any court that would require either material modification or termination of the Second Addendum.

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

## **8. MISCELLANEOUS PROVISIONS**

### **8.1 Best Efforts to Obtain Court Approval**

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

### **8.2 No Admission**

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

- a) offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Named Plaintiff or defense asserted by Defendant, of the validity of any claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing on the part of Named Plaintiff or Defendant;
- b) offered or received by or against Named Plaintiff or Defendant as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the allegations

in the Litigation, and evidence thereof shall not be directly or indirectly admissible, in any way, (whether in the Litigation or in any other action or proceeding), except for purposes of enforcing this Second Addendum and the Final Judgment and Order including, without limitation, asserting as a defense the release and waivers provided herein;

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

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

### **8.3 Court's Jurisdiction**

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

### **8.4 Settlement Notices**

Except for the Class Notice Plan, as provided for in Section 4.1 above, all other notices or formal communications under this Second Addendum shall be in writing and shall be given, with a copy by email: (1) by hand delivery; (2) by registered or certified mail, return receipt requested,

postage pre-paid; or (3) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Named Plaintiff and the Settlement Class:

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

For Defendant:

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

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

#### **8.5 Taxes**

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

#### **8.6 Parties' Costs**

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

#### **8.7 Confidentiality of Discovery Materials and Information**

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

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

Defendant reserves the right to communicate with its students, community, and members of the public about the Second Addendum in the ordinary course of its business. The Parties further agree to cooperate with each other and the Settlement Administrator in connection with any mass communications to the members of the Second Group of Additional Students or others, as may be necessary to effectuate the terms of this Second Addendum. Otherwise, Named Plaintiff and Class

Counsel agree not to make any public statements regarding the settlement or the Litigation as to any matters not contained in the public record of the Litigation that are inconsistent with the Class Notice or this Second Addendum.

**8.9 Complete Agreement**

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

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

**8.10 Headings for Convenience Only**

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

**8.11 Severability**

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, with the exception of the release in Section 4.3, this Second Addendum shall continue in full force and effect without said provision to the extent Defendant does not exercise its right to terminate under Section 7.

**8.12 No Party Is the Drafter**

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

**8.13 Binding Effect**

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

**8.14 Authorization to Enter Addendum**

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

**8.15 Execution in Counterparts**

Named Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Second Addendum in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile, electronic, and scanned signatures shall be considered as valid signatures as of the date signed. This Second Addendum shall not be deemed

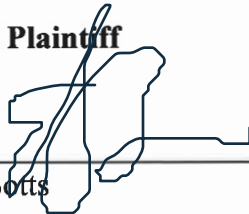
executed until signed by Named Plaintiff, by Class Counsel, and by counsel for and a representative of Defendant.

**8.16 Governing Law**

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

**9. SIGNATURES**

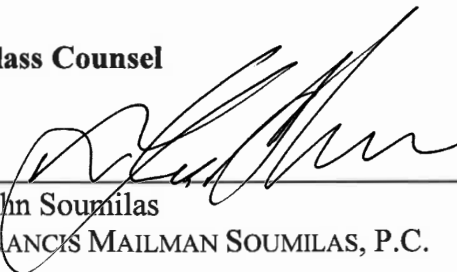
**Named Plaintiff**

  
\_\_\_\_\_  
Elena Botts


**Defendant Johns Hopkins University**

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

**Class Counsel**

  
\_\_\_\_\_  
John Soumilas  
FRANCIS MAILMAN SOUMILAS, P.C.

**Counsel for Defendant**

  
\_\_\_\_\_  
Shon Morgan  
QUINN EMANUEL URQUHART & SULLIVAN, LLP

# **Exhibit A**



UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

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

Upon consideration of Named Plaintiff<sup>1</sup> Elena Botts's Unopposed Motion for Preliminary Approval of Second Settlement Addendum and Order Directing Notice to the Second Group of Additional Class Members (the "Motion"), IT IS HEREBY ORDERED:

1. The terms of this Court's December 20, 2022 Order Preliminarily Approving Settlement and Directing Notice to Settlement Class, ECF 89, remain in effect and are fully incorporated herein by reference.
2. The terms of this Court's April 20, 2023 Order finally approving the settlement and granting Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Costs and for a Service Award, ECF 96, remain in effect and are fully incorporated herein by reference.
3. The terms of this Court's August 8, 2023 Order Preliminarily Approving Settlement Addendum and Directing Notice to Additional Class Members, ECF 100, remain in effect and are fully incorporated herein by reference.

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<sup>1</sup> Capitalized terms are defined in Section 2 of the Parties' Second Addendum to Class Settlement Agreement and Release, ECF 114-2.

4. The terms of this Court's December 13, 2023 Orders finally approving the settlement and granting Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Costs and for a Service Award, ECFs 109, 110, remain in effect and are fully incorporated herein by reference.

5. The Settlement Class, defined as "all people who paid Defendant Johns Hopkins University tuition and/or fees for the Spring Semester 2020, which tuition and fees have not been refunded," appropriately encompasses the Second Group of Additional Students who may assert the claims alleged in Counts I and II of Named Plaintiff Elena Botts's Amended Complaint against Defendant Johns Hopkins University, *see* ECF 35.

6. The Second Addendum to the Class Action Settlement Agreement and Release entered into between the Parties as of March 29, 2024 (the "Second Addendum"), ECF 114-2, appears, upon preliminary review, to be fair, reasonable, and adequate to the Second Group of Additional Students, *i.e.*, those members of the Settlement Class not previously provided notice. The terms of the Second Addendum are fully incorporated herein by reference.

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

8. The Court finds that the Second Addendum concerns 2,607 members of the Settlement Class, the Second Group of Additional Students.

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

10. The Court affirms its earlier findings that (1) the attorneys for Named Plaintiff, James A. Francis, John Soumilas, Kevin C. Mallon, and Jordan M. Sartell of Francis Mailman

Soumilas, P.C. and Courtney Weiner of the Law Office of Courtney Weiner PLLC, have and will continue to adequately represent the Settlement Class and (2) their appointment as Class Counsel.

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

12. The Court will hold a Final Approval Hearing pursuant to FED. R. CIV. P. 23(e) at \_\_\_\_\_.m. on \_\_\_\_\_, 2024, in Courtroom \_\_\_\_ of the United States District Courthouse located at 101 West Lombard Street, Baltimore, Maryland for the following purposes:

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

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

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

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

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

14. The Court approves the Parties' Notice, which is attached to the Second Addendum as Exhibit C. To the extent the Parties or Settlement Administrator determine that ministerial changes to the Notice are necessary before disseminating it to the Second Group of Additional Students, they may make such changes without further application to the Court.

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

16. If a member of the Second Group of Additional Students chooses to opt-out of the Settlement Class, such Class member is required to submit a request for exclusion to the Settlement Administrator, post-marked on or before the date specified in the Notice, which shall be no later than thirty (30) days before the date of the Final Approval Hearing. The request for exclusion must include the items identified in section 4.3.4.1 of the Second Addendum. A member of the Second Group of Additional Students who submits a valid request for exclusion using the procedure identified above shall be excluded from the class for all purposes. No later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall prepare a declaration listing all the valid opt-outs received and shall provide the declaration and list to Class Counsel and Defendant's counsel, with Class Counsel then reporting the names appearing on this list to the Court before the Final Approval Hearing.

17. Members of the Second Group of Additional Students who do not file a timely and valid request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

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

- A. the member of the Second Group of Additional Students's full name, address and current telephone number;
- B. if the individual is represented by counsel, the name and telephone number of counsel and, if counsel intends to submit a request for fees, all factual and legal support for that request;
- C. all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- D. the identity of any witnesses the objector may call to testify;
- E. a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, if any, as well as true and correct copies of such exhibits; and
- F. a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

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

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

20. Neither this Preliminary Approval Order, nor the Second Addendum, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Class Released Claims. This Preliminary Approval Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the Second Addendum does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class members (including the Second Group of Additional Students), or the Defendant.

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

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

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
HONORABLE JULIE R. RUBIN  
UNITED STATES DISTRICT JUDGE

# **Exhibit B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

**[PROPOSED] FINAL APPROVAL ORDER – THIRD PHASE**

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

1. On \_\_\_\_\_, the Court held a Final Approval Hearing, at which time the Parties<sup>1</sup> were afforded the opportunity to be heard in support of or in opposition to the Second Addendum to the Class Action Settlement Agreement and Release entered into between the Parties as of March 29, 2024 (the "Second Addendum"), ECF 114-2. The Court received \_\_\_\_\_ objections regarding the Second Addendum.

2. Notice to the Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Order Preliminarily Approving Second Settlement Addendum and Directing Notice to Second Group of Additional Class Members, ECF \_\_\_\_\_. Such Notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances, including the dissemination of individual notice to all

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<sup>1</sup> Capitalized terms are defined in Section 2 of the Parties' Second Addendum to Class Settlement Agreement and Release, ECF 114-2.



members who can be identified through reasonable effort; and satisfies Rule 23(e) and due process.

3. As set forth in ECF 88-1, Keough Decl., at 2-3, ¶ 4, Defendant has timely filed notification of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed such notification and accompanying materials and finds that the notification complies fully with the applicable requirements of CAFA.

4. The terms of the Second Addendum, ECF 114-2, are incorporated fully into this Order by reference. The Court finds that the terms of Second Addendum are fair, reasonable, and adequate in light of the complexity, expense and duration of litigation and the risks involved in establishing liability, damages, and in maintaining the class action through trial and appeal.

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

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

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

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

9. The Court finds that it is in the best interests of the parties and the Settlement Class, including the Second Group of Additional Students, and consistent with principles of judicial economy that any dispute between any Settlement Class member (including any dispute as to whether any person is a Settlement Class member) and any Released Party which, in any way,

relates to the applicability or scope of the Second Addendum or the Final Judgment and Order should be presented exclusively to this Court for resolution by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

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

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

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

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

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

14. Upon consideration of Class Counsel’s application for attorneys’ fees and costs, the Court awards \$666,674.42 as reasonable attorneys’ fees and reimbursement for reasonable litigation costs incurred, which shall be paid from the Settlement Fund.

15. Upon consideration of the application for a Service Award, the Named Plaintiff, Elena Botts, is awarded the sum of \$3,787.92, to be paid from the Settlement Fund, for the service she has performed for and on behalf of the Settlement Class.

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

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

18. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this settlement, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendant and each member of the Class for any suit, action, proceeding, or dispute arising out of or relating to this Order, the Second Addendum or the applicability of the Second Addendum. Without limiting the generality of the foregoing, any dispute concerning the Second Addendum, including, but not limited to, any suit, action, arbitration or other proceeding by a Class member in which the provisions of the Second Addendum are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action or proceeding, to the fullest extent possible under applicable law, the parties hereto and all Settlement Class members are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the

jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

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

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

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

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
HONORABLE JULIE R. RUBIN  
UNITED STATES DISTRICT JUDGE

# **Exhibit C**

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

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

**NOTICE OF CLASS ACTION SETTLEMENT**

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

**You can find more information about the settlement on the Settlement Website:  
[www.JHUSpring2020Settlement.com](http://www.JHUSpring2020Settlement.com)**

**INTRODUCTION**

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

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

The Parties have agreed to settle the Litigation subject to the approval of the Court via a signed Second Addendum to Class Settlement Agreement and Release (the “Second Addendum”). Defendant has agreed to pay \$2,000,023.25 into a Settlement Fund that will provide compensation to Settlement Class members, pay for notice and administration, provide for any approved Service

Award to Named Plaintiff, and compensate Class Counsel for any approved attorneys’ fees and costs.

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

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

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

**FREQUENTLY ASKED QUESTIONS**

**Question 1. Why did I receive this notice?**

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

**Question 2. What is a class action?**

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These similarly situated people are known as Settlement Class members. In a class action, one court resolves the issues for all class members, except for

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those who exclude themselves from the Class. The Honorable Julie R. Rubin, United States District Judge, is presiding over the Litigation.

**Question 3. Why is there a settlement?**

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

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

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

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

This lawsuit was brought by Named Plaintiff Elena Botts, who took a lead role in the Litigation and assisted in its resolution. In addition to her proportional share as described in Question 4, Class Counsel will request that the Court award her an additional \$3,787.92 to reflect the time and energy she expended on behalf of herself and Settlement Class members. The Court may choose to award a different amount.

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

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

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



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

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

*Botts, et al. v. The Johns Hopkins University*  
c/o Settlement Administrator  
P.O. Box \_\_\_\_\_  
CITY\_, ST\_ ZIP\_\_

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

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

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

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

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

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

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

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

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

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

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

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

**Question 11. How will the lawyers be paid?**

Class Counsel will ask the Court to approve a payment of attorney's fees and costs of no more than \$666,674.42, which represents one-third of the Settlement Fund. This payment is to compensate Class Counsel for the work they have performed in the Litigation including filing pleadings and briefs, investigating the facts, conducting discovery, attending court conferences, participating in settlement discussions, and negotiating and overseeing the settlement.

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

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

*Botts, et al. v. The Johns Hopkins University*  
c/o Settlement Administrator  
P.O. Box \_\_\_\_\_  
CITY\_, ST\_ ZIP\_

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

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

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

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

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

**Question 14. Has the Court approved the Settlement?**

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

However, if you wish to raise a valid concern, you should alert the attorneys and they can appear at a Final Approval Hearing conference before the Court on \_\_\_\_\_, 2024, at \_\_:\_\_ am/pm, in Courtroom \_\_\_ of the United States Courthouse located at 101 West Lombard Street, Baltimore, Maryland, 21201 if your issue is not resolved to your satisfaction with the attorneys. If there are objections, the Court will consider them. The Judge will decide whether to listen to any issues that are properly raised.

**Question 15. Are there more details about the Settlement?**

This Notice summarizes the proposed settlement Addendum. More details are in the Addendum, which can be found on the Settlement Website, [www.JHUSpring2020Settlement.com](http://www.JHUSpring2020Settlement.com).

# **Exhibit 2**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

ELENA BOTTS, on behalf of )  
herself and all others )  
similarly situated, )  
Plaintiff, )  
vs. ) CASE NUMBER: 20-cv-01335-JRR  
)  
THE JOHNS HOPKINS UNIVERSITY,) )  
Defendant. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS - SETTLEMENT CONFERENCE  
BEFORE THE HONORABLE JULIE R. RUBIN  
UNITED STATES DISTRICT JUDGE  
Wednesday, December 13, 2023  
Baltimore, Maryland

A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: JOHN SOUMILAS, ESQUIRE  
FRANCIS MAILMAN SOUMILAS PC  
1600 Market Street, Suite 2510  
Philadelphia, Pennsylvania 19110

BY: COURTNEY WEINER, ESQUIRE  
LAW OFFICE OF COURTNEY WEINER PLLC  
1629 K Street, NW, Suite 300  
Washington, DC 20006

FOR THE DEFENDANT:

BY: SHON MORGAN, ESQUIRE (present via telephone)  
QUINN EMANUEL URQUHART and SULLIVAN LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

BY: JONATHAN GORDON COOPER  
QUINN EMANUEL URQUHART & SULLIVAN LLP  
1300 I Street NW, Suite 900  
Washington, DC 20005

\*\*\*Proceedings Recorded by Mechanical Stenography\*\*\*  
Transcript Produced by Computer-Aided Transcription

**P R O C E E D I N G S**

(2:07 p.m.)

**THE CLERK:** Your Honor, calling the case of Botts v. Johns Hopkins University, case number JRR-20-CV-1335. The case comes before the Court for a final approval of a settlement. If the plaintiff's counsel could introduce themselves, please.

**MR. SOUMILAS:** Your Honor, good afternoon. For the class representative, Elena Botts and the certified class in this matter, I'm John Soumilas. My co-counsel, Courtney Weiner is also here with us today.

**THE COURT:** Good afternoon.

**MS. WEINER:** Good afternoon.

**MR. MORGAN:** Good afternoon, Your Honor. Jonathan Cooper from Quinn Emanuel for the defendant, Johns Hopkins. And my colleague, Shon Morgan from Quinn Emanuel is on the telephone line and he'll be the primary speaker for Johns Hopkins.

**THE COURT:** That's just fine. And I recall my order from April said that people didn't all have to be here if they weren't, I think, local was the issue.

All right, well just to set the table and I should hear from counsel who is on the phone.

**MR. MORGAN:** Good afternoon, Your Honor. Shon Morgan. Where we are substantively is there's been a very successful settlement. No objections or exclusions and I think

1 measured against other settlements in similar cases, this  
2 falls in the spectrum of one that is favorable to the  
3 students.

4 The main issue as Your Honor is aware that there have  
5 been some unanticipated revisions to the class list and that  
6 sequence of class notice issues didn't quite unfold as we all  
7 envisioned. So, you know, let me provide a little more context  
8 about that issue.

9 **THE COURT:** Mr. Morgan, I didn't mean to be rude and  
10 interrupt you. I just wanted to have you put your  
11 representation on the phone and I'm going to go ahead and sort  
12 of say some preliminary remarks and then I'm happy to hear  
13 from you and Mr. Soumilas or Ms. Weiner.

14 **MR. MORGAN:** Thank you. Perfect. Thank you, Your  
15 Honor.

16 **THE COURT:** Okay, so Mr. Morgan is here on the phone  
17 as defense counsel.

18 So as counsel will remember and the record will reflect,  
19 we had a really sort of two-part -- I think it was April 17th  
20 and then I issued an oral ruling on April 20th followed by the  
21 order that is in the record.

22 I wanted to just set forth that we're here on a couple of  
23 things: One is at ECF 103 is the motion for settlement or  
24 final approval of class settlement in its second phase as set  
25 forth in the very thorough Addendum to Class Settlement

1 Agreement and release at ECF 99-2, as well as the motion for  
2 attorneys' fees. There's also the recently filed at ECF 107 is  
3 a stipulation regarding dissemination of notice and corrective  
4 payments.

5 I understand that all of the motions that are pending --  
6 obviously the stipulation is a stipulation -- are unopposed.  
7 I've read them thoroughly. I went back to my original ruling  
8 and findings from April to be sure that I felt similarly today  
9 and I do.

10 So I'm going to -- I'm happy to hear from counsel. I  
11 think I'm prepared to render an oral ruling from the bench,  
12 followed by execution of the orders that were proposed to the  
13 Court.

14 I will hear from counsel. I would just ask in advance  
15 before you make any presentation, that counsel can address  
16 footnote 1 of ECF 107, specifically with respect to the  
17 identification of additional students who should be eligible  
18 for compensation and wanted to know more about that. And if  
19 that's not already been addressed in the filings, what the  
20 Court can expect.

21 So I don't know who wishes to present first, Mr. Soumilas  
22 or Mr. Morgan, but I'm happy to hear from both of you.

23 **MR. SOUMILAS:** Your Honor, for the plaintiff in the  
24 class I'm prepared to make some remarks concerning the two  
25 pending motions as Your Honor said at ECF 103 for final



1 approval; and 101 for fees; and also the stipulation at 107.  
2 Those are the matters before the Court today and we would  
3 respectfully request approval of the stipulation and the  
4 motions. And I have some preliminary remarks on that  
5 concerning this latest hiccup.

6 Unfortunately I don't have any information through today  
7 as to what this is or what the scope of it is, so I don't have  
8 a proposal like last time as to how to address it. I  
9 understand only that there's a manual review taking place at  
10 Johns Hopkins because the automated review that happened and  
11 that was verified in interrogatories and again in declarations  
12 through high-level administrative folks at the Provost office  
13 did not catch everyone. I'll commend the defendant University  
14 and its lawyers for doing this. I've done class actions for  
15 about 20 years.

16 **THE COURT:** I can't imagine a manual review. I mean,  
17 my goodness. What an effort.

18 **MR. SOUMILAS:** I feel like when something falls  
19 through the cracks sometimes frankly, Your Honor, people just  
20 kind of ignore it. I commend them for doing this.

21 **THE COURT:** Absolutely.

22 **MR. SOUMILAS:** And I await to get more information  
23 as to how many students and what happened and hopefully we can  
24 confer and come up with some reasonable proposal for that. But  
25 on that score I really don't have anything else to say.

1           **THE COURT:** Okay. I mean, I have an idea about what  
2 to do about that, but rather than, you know, as my former  
3 colleague used to say, I'm going to stay in my lane until I  
4 don't need to.

5           So Mr. Morgan, did you have any -- do you have a wish to  
6 make a presentation about footnote 1 or anything else? And  
7 I'm happy to voice my ideas about how we can address that  
8 without throwing a wrench in the machine, but I'm happy to  
9 hear from you.

10           **MR. MORGAN:** Well, look. As Your Honor had  
11 suggested and Mr. Soumilas said, we have an institution here  
12 who is acting in good faith about they're very sorry that they  
13 weren't able to capture all of this in the first go-around.

14           You know, among the complications are they have two  
15 undergrad divisions, nine graduate schools. The recordkeeping  
16 is not uniform.

17           **THE COURT:** Yeah.

18           **MR. MORGAN:** And this isn't the kind of information  
19 they're called upon to pull. And so they actually have done --  
20 they've hired an outside consultant to go through and do the  
21 file-by-file review at their own expense obviously because  
22 they want to get this right. But it is going to result in --  
23 we don't know the exact number yet, but it's going to be a  
24 substantial number of people that have not yet been  
25 compensated and that they want to make right.

1           **THE COURT:** Do you have a best -- or a hypothesis  
2 about what the magnitude of that substantial number is, of  
3 people? And if you don't, you don't. I'm not asking you to  
4 guess, I'm just trying to get a sense of whether it's bigger  
5 than what we've seen.

6           **MR. MORGAN:** It's bigger than the last one. I think  
7 we're talking about it could be as many as 3,000.

8           **THE COURT:** Okay. So first, I do commend the  
9 University for engaging in outside counsel because I think  
10 that sort of -- not that that outside consultant rather is a  
11 fiduciary to the University, but I appreciate that there's a  
12 certain degree of independence. And so I think that's helpful  
13 in terms of the Court ultimately reaching a finding of it  
14 being fair and reasonable and equitable. So I commend that  
15 issue.

16           I also will say there's nothing about this that, you  
17 know, is too terribly surprising to me because as Mr. Soumilas  
18 said, with a university of this scope with lots of different  
19 umbrellas if you will of schools and different students and  
20 the recordkeeping as you said not being uniform throughout, I  
21 can imagine it's been an enormous frustration to everybody.  
22 So I appreciate that everyone is acting in best faith and has  
23 an excellent work ethic about it. So I have zero concern  
24 about it. I just, you know, at some point there's got to be an  
25 end and, you know, I'm sure that's frustrating to all of you.

1           So what I would propose and we can, you know, I'm  
2           throwing this out there as sort of a brainstorming, not an  
3           edict, but I'm wondering if it might make sense to complete  
4           today's proceeding. You know, assuming nothing has changed  
5           from what's on the paper I am absolutely satisfied to resolve  
6           the issue and issue the proposed orders after I make the  
7           requisite findings.

8           I'm wondering whether the parties would find it helpful  
9           to simply move to reopen the case when it becomes clear what  
10          the scope of these additional numbers are and we can go from  
11          there, unless you think that that's going to run afoul of Rule  
12          23. So I'm going to throw it open.

13                 **MR. SOUMILAS:** Your Honor, for the plaintiff and the  
14          class our strong preference is to at least wrap up this Phase  
15          2 as we've called it -- it's been a while for some of these  
16          students -- and not just keep it dangling open forever.

17          Obviously today is the first time I'm hearing about  
18          3,000. Again, I don't know about what population we're talking  
19          about, which schools and what happened. I think we're going to  
20          need to -- I have a letter being prepared to defense counsel's  
21          office with a set of questions and at least I need some  
22          preliminary information, but I think Your Honor is correct  
23          that we're going to need to get to the bottom of this and then  
24          move to reopen possibly for a Phase 3.

25                 **MR. MORGAN:** And from our perspective, Your Honor,

1 that approach is fine. I mean, I think the one very beneficial  
2 aspect of the way we proceed collectively is that it's been in  
3 just two to three increments. And so we can finish as Mr.  
4 Soumilas suggested, the Phase 2. There's no reason that order  
5 shouldn't be entered and those folks shouldn't get their  
6 checks. And then we can move on and address the next group,  
7 which hopefully would be the last group.

8 **THE COURT:** I think, you know, it's not an ideal way  
9 of proceeding because, you know, ultimately the orders are  
10 going to close the case. But as I said, you know, I think --  
11 we're doing it now, but I'll articulate in a more cogent  
12 fashion that I'm expecting there to be a motion to reopen for  
13 that purpose, for the purposes set forth in that footnote 1.  
14 And certainly that will be a consent motion, I'm assuming, and  
15 the Court will grant it as a matter of course.

16 I agree. I'm uncomfortable not proceeding today because I  
17 do think that there are, you know, so many students that have  
18 been awaiting their proper compensation. And in addition to  
19 the original crew of students that required the second phase,  
20 these sort of additional students that are reflected in the  
21 motion at 103 and the stipulation about sort of the corrective  
22 payments to be made for those students that paid before  
23 January 2020 for the spring semester of 2020, what payments in  
24 whole or in part. So we'll address all of that. I just, you  
25 know, and I don't know -- well, I guess we'll address that

1 when the case gets reopened. But my only concern is that I  
2 think that when you do move to reopen and you file whatever  
3 papers are required to be filed, that counsel reach a point  
4 where they're capable of saying in those motions papers that  
5 everybody is satisfied based on the efforts made that there is  
6 no other unknown universe of students that have not been  
7 captured. Because I think in order for us to all feel  
8 comfortable that Rule 23 is met -- because I know Hopkins  
9 doesn't want to have to be dumping additional money into the  
10 settlement amount, or the fees, or the award for Ms. Botts,  
11 but I also want to be sure that the Court's ruling is durable.  
12 And I say that not because of my own ego, but for the parties'  
13 sake.

14 So I guess we'll hit that issue when we come to it, but I  
15 just sort of put that bee in your bonnet so that when you do  
16 move to reopen, I would ask that you make some sort of  
17 representation about the confidence of counsel that you have  
18 scraped the bottom of the pot if you will to make sure that  
19 there are no other students that could reasonably have been  
20 identified.

21 Okay, so I will expect that motion to reopen. And when  
22 you do file it, just so that it doesn't, you know, there's  
23 just so many hundreds of cases that we have pending, I think  
24 it would be helpful to be sure that it gets efficient, prompt  
25 attention, that you call chambers or e-mail chambers after you

1 filed it so it doesn't just sort of die on the vine and those  
2 students can get their compensation and everybody can wrap it  
3 up. Because I'm sure after all these years of litigating,  
4 everybody is ready to have this off of their monthly  
5 billables.

6 All right, is there anything else about that before we  
7 proceed for the reason we're really here?

8 **MR. SOUMILAS:** No, Your Honor. I think that's a  
9 very good approach and we agree to do that.

10 **THE COURT:** Okay.

11 Mr. Morgan, any issues or concerns about that?

12 **MR. MORGAN:** No. I understood Your Honor and that's  
13 precisely the point of the, frankly, extensive file-by-file  
14 review that the University undertook was to be able to give  
15 the Court the confidence that this will be the end of the road  
16 for this issue.

17 **THE COURT:** And I mean, to the extent that I haven't  
18 said it, I'll say it again that I not only have no concerns, I  
19 am impressed and I feel comfortable and at ease with the  
20 good-faith efforts of all counsel involved, of the high-level  
21 administrators at the school who have made this, I'm sure,  
22 quite a focal point of their work. So I am comfortable. I am  
23 confident in your good faith efforts. I have zero concern  
24 about that. I just want to be sure that when we do finally,  
25 finally close the case, that nobody has that 3:00 in the

1 morning stare at the ceiling feeling about, you know, not  
2 having really wrapped it up with a bow.

3 So all right, I'm going to stop talking about that and I  
4 will say for the record before we begin that I'm not --  
5 although I may end up doing it anyway, I'm not going to  
6 necessarily recite again all of the findings regarding the  
7 original motion and result in the April 2023 order and I'm  
8 generally going to restrict my findings to the second phase  
9 pertaining to the additional students in the undercompensated  
10 group, as well as the pending motion for fees that it's a  
11 motion for fees that have accrued since last time there was a  
12 motion for fees. Furthermore, I think the same is the case as  
13 to the award to be given to class representative Ms. Botts.

14 I will also note that there is, to my knowledge, no  
15 objector or person other than counsel of record present or who  
16 has requested to be heard. I previously addressed the Bernier  
17 objection and that need not be addressed again.

18 I will also note that pursuant to the stipulation at 107,  
19 in addition to the 1,652 additional students, 263 more  
20 students to whom notice had not been disseminated were  
21 identified in May of this year, bringing the total number of  
22 additional students at that time to 1,915.

23 Thereafter, in September of 2023, an additional 333  
24 students were identified, bringing the total number of AS  
25 students to 2,248. All identified additional students have



1 been included in the class and all required notices to my  
2 satisfaction have been provided to ensure that due process is  
3 amply met and satisfied to enable them to execute their rights  
4 under Rule 23.

5 I also understand that defendant, the Johns Hopkins  
6 University, increased the settlement fund to \$1,724,607.69 to  
7 ensure that all class members, including the 2,248 additional  
8 students are treated equitably pursuant to the stipulation.

9 The Court appreciates that corrective payments will be  
10 sent to the students whose pre-January 2020 payments,  
11 including partial payments for the spring 2020 semester were  
12 not captured in calculations of compensation to be paid to  
13 those members. To be clear, these initially undercompensated  
14 students were included in all notice and other administrative  
15 mailings and distributions to class members. And to the  
16 extent those students voice concern or objection regarding  
17 settlement funds, the proposed plan and order set forth in the  
18 stipulation resolves entirely the issues raised. And the  
19 Court is otherwise satisfied that the resolution is fair, and  
20 reasonable, and more than adequate.

21 To be clear, again, no undercompensated student or any  
22 other student has objected to the Court and none is present  
23 here.

24 I also want to mention again that I do appreciate the  
25 great deal of care, attention, and generally thorough approach

1 taken to ensure that the additional students, as well as  
2 undercompensated students, received equitable treatment under  
3 the Settlement Agreement. The thorough explanation regarding  
4 methods and calculations set forth in the papers submitted  
5 more than satisfies me that Rule 23 is met.

6 I'm going to now take an opportunity to set the  
7 groundwork for the Court's findings and the requisite factors  
8 to consider. The Court is first going to direct its attention  
9 to the motion at 103. This is for final approval of the second  
10 phase of the class settlement and the addendum at 92 -- pardon  
11 me, the addendum at ECF 99-2. And as I said, because the  
12 proposed settlement meets the requirements under Federal Rule  
13 23, I am going to approve the settlement.

14 Rule 23(e) (1) requires that the Court direct notice in a  
15 reasonable manner to all class members who would be bound by  
16 the proposal. In addition, 23(h) (1) provides that notice of  
17 the motion for an award of attorneys' fees, that is, must be  
18 served on all parties and for motions by class counsel  
19 directed to the class members in a reasonable manner. Notice  
20 need only fairly apprise the prospective members of the class  
21 of the terms of the proposed settlement and of the options  
22 that are open to them in connection with the proceedings.  
23 That's *McAdams v. Robinson* from the Fourth Circuit at 26 F.4th  
24 149 which in turn cites *Wal-Mart Stores v. Visa* at 396 F.3d  
25 96. That is a 2005 case from the Second Circuit.

1 Further, in order to satisfy due process, notice has to  
2 be reasonably calculated under the circumstances to apprise  
3 absent class members of the pendency of the action and afford  
4 them an opportunity to present their objections. Notice was  
5 issued in the manner outlined in the approval orders issued by  
6 the Court pursuant to the Settlement Agreement at 4.1.1, as  
7 well as Exhibit C to the Agreement which is, in fact, the  
8 notice. And I find that it was reasonably calculated to  
9 afford interested parties an opportunity to present  
10 objections.

11 The parties' notice plan which was set forth at Section  
12 4.1.3 of the Settlement Agreement and its addendum fully  
13 satisfies Rule 23, as well as all due process considerations  
14 and all steps taken regarding the additional students as  
15 described in the motion at 103 and its addendum at 99-2 and  
16 the stipulation at 107. The notice provided class members with  
17 among other things, details regarding the terms of settlement,  
18 the amount that class counsel intended to seek with respect to  
19 service awards and attorneys' fees and expenses, including  
20 fees and expenses that would come out of the settlement amount  
21 and information regarding how to object to the proposed  
22 settlement.

23 I do find that the described -- that the notice described  
24 the terms of the settlement in sufficient and clear detail,  
25 adequate to alert those adverse viewpoints to investigate and

1 to come forward and be heard. I also note that the Class  
2 Action Fairness Act requires certain Government agencies  
3 receive notice of any proposed class settlement. JND Legal  
4 Administration which is referred to as JND in the papers as  
5 the settlement administrator did effect the CAFA notice in  
6 compliance with 28 USC § 1715(b) providing a list of  
7 information required to be included with the CAFA notice and  
8 more than 90 days have elapsed since that notice was provided  
9 as required by the statute.

10 Pursuant to Section -- rather Rule 23(e) which provides  
11 that the claims, issues, or defenses of a certified class may  
12 be settled, voluntarily dismissed, or compromised only with  
13 the Court's approval, Rule 23(e)(2) also requires that the  
14 Court find that a proposed settlement is fair, reasonable, and  
15 adequate. And when the Court reviews a proposed class  
16 settlement, it acts as a fiduciary for the class.

17 The primary concern addressed by the requirement of Rule  
18 23(e)(2) is the protection of class members whose rights may  
19 not have been given adequate consideration during the  
20 settlement negotiations. That is, of course, pursuant to  
21 *Jiffy Lube* at 927 F.2d 155 out of the Fourth Circuit in 1991.  
22 The Fourth Circuit has developed a multi-factor standard, a  
23 test for assessing whether a class action does meet that fair,  
24 reasonable, and adequate standard under Rule 23(e)(2).

25 I am satisfied that all of the *Jiffy Lube* and *Lumber*

1     *Liquidator* factors are well met regarding the addendum, in  
2     particular. In determining a settlement's fairness, the Court  
3     considers the posture of the case at the time the settlement  
4     was proposed, the extent of discovery that had been conducted,  
5     the circumstances surrounding the negotiations, and the  
6     experience of counsel in the area of class action litigation.  
7     The fairness analysis is intended primarily to ensure that a  
8     settlement is reached as a result of good faith bargaining at  
9     arm's length without collusion.

10           The Court concludes that the settlement as effected by  
11     the -- and including the addendum is fair and all of the  
12     factors weigh in favor of this finding. It was reached as a  
13     result of good faith bargaining at arm's length and I know  
14     took place over a very long period of time without collusion  
15     following extensive contentious negotiations through the aid  
16     of a private JAMS mediator which required a good deal of time,  
17     effort, and expense by the parties in so far as prep and the  
18     exchange of position statements and all of the things that I  
19     know go into a mediation of that level of sophistication and  
20     complexity.

21           The posture of the case and the extent of discovery weigh  
22     in favor of this finding as well. This case was vigorously  
23     litigated by the parties and settled only after laborious and  
24     complex dispositive motions briefing. An extensive discovery  
25     was completed including voluminous documents produced by

1 defendant. And I'm sure now -- originally I said in excess of  
2 66,000 pages and I know that there has been additional  
3 discovery, so that document production has no doubt been  
4 dwarfed by this time. There were also lots of depositions,  
5 written discovery, and expert consultations.

6 The Court notes that the parties made thorough, careful,  
7 and strenuous efforts to ensure all additional students and  
8 undercompensated students were afforded all due process rights  
9 under Rule 23.

10 Both counsel, I should say counsel on both sides of the  
11 dispute have deep, sophisticated experience in class action  
12 litigation and specifically in subject matters relevant to  
13 this litigation, including consumer protection and consumer  
14 fraud.

15 In assessing the adequacy of a proposed settlement as  
16 affected by and including the addendum here, I'm considering  
17 the relative strength of the plaintiffs' case on the merits,  
18 the existence of any difficulties of proof or strong defenses  
19 the plaintiffs are likely to encounter if the case goes to  
20 trial, the anticipated duration and expense of additional  
21 litigation, the solvency of the defendant, and the likelihood  
22 of recovery on a litigated judgment, as well as the degree of  
23 opposition to the settlement.

24 The most important factors in this analysis are the  
25 relative strength of the plaintiffs' claims on the merits, and

1 the existence of any difficulties of proof or strong defenses.  
2 The focus of the adequacy is the Agreement's substantive  
3 propriety.

4 I do conclude that the proposed settlement is adequate.  
5 Plaintiffs' claims have been hotly disputed by defendant and  
6 the fabric of this law across the country pertaining  
7 specifically to the nature and subject of COVID-related class  
8 actions as to the tuition retention practices of colleges and  
9 universities highlights the challenges that plaintiff would  
10 face -- plaintiffs would face if the case went forward.

11 If the case were not settled, plaintiff would no doubt  
12 face the task of seeking certification of a class for trial  
13 and the likelihood of protracted appeals were she to prevail  
14 on some or all of the merits, not to mention the expense and  
15 delay of Rule 56 dispositive motions, and the very  
16 considerable costs and risks associated with trial, not to  
17 mention its duration.

18 Solvency of the Johns Hopkins University has not been  
19 raised as a concern or a risk to the plaintiff or potential  
20 trial class. However, this does not weigh against approval of  
21 the proposed settlement. Pursuant to *Henley v. FMC Corp.* at  
22 207 F.Supp. 2d 489 out of the Southern District of West  
23 Virginia in 2002, that Court held the Court has no doubt the  
24 defendant would be able to satisfy any judgment entered  
25 against it. That consideration, however, is largely beside the

1 point given the other factors weighing in favor of a  
2 negotiated resolution and I feel likewise here.

3 Reactions of the class members in this case favor  
4 settlement approval. No member of the settlement class known  
5 to the parties or the Court has elected to pursue parallel  
6 individual action for recovery for the claims since subjected  
7 to the proposed settlement here. The Court is aware of only  
8 one objection to the proposed settlement and that was  
9 submitted by Shannon Bernier which the Court examined and  
10 evaluated and previously overruled. She has not appeared or  
11 imposed a new or renewed objection.

12 With respect to reasonableness, the Fourth Circuit has  
13 not enumerated factors for assessing reasonableness, but it  
14 has suggested that assessing whether a class settlement is  
15 reasonable involves examining the amount of the settlement.  
16 And to the extent that reasonableness does not -- does any  
17 work not already performed by one of the other Rule 23(e) (2)  
18 requirements, it at least ensures that the amount on offer is  
19 commensurate with the scale of the litigation and the  
20 plaintiffs' chances of success at trial.

21 The Fourth Circuit has never required an estimate of what  
22 the class members would have received if they had prevailed at  
23 trial and the Court is not required to decide the merits of  
24 the case or to substitute its judgment of what the case might  
25 have been worth for that class counsel. Instead, the Court



1 must at least satisfy itself that the class settlement is  
2 within the ballpark as we say of reasonableness. And I am  
3 satisfied that it does squarely fall within the ballpark of  
4 reasonableness.

5 The final settlement amount, less attorneys' fees and  
6 costs, a class rep service award and the class notice and  
7 related administrative expenses and the formula for how class  
8 members' cash awards are to be calculated is commensurate with  
9 the scale and scope of the litigation, particularly when  
10 weighed against the risks and delay of trial and appellate  
11 practice. And I'm referring specifically to Section 4.2.1 of  
12 the Agreement and pages 4 to 5 of ECF 91-1. I am also  
13 satisfied that the terms of the release at Section 4.3 are  
14 appropriately narrow and do not result in a release of rights  
15 beyond what is fair and necessary to achieve finality for the  
16 parties.

17 With respect to the representation of the class as to  
18 both the class representative, Ms. Botts, and counsel, to the  
19 extent these factors of 23(e) have not been addressed before  
20 just this moment, I do find that Ms. Botts adequately  
21 represented the class and that the class counsel has as well.  
22 Ms. Botts was actively engaged in litigation from the start,  
23 including pleadings, reviews, and staying in communication  
24 with counsel to ensure that the class that she represented was  
25 involved in settlement discussions and kept abreast and aware

1 and involved in the general status of the litigation overall  
2 which required a considerable amount of effort, given the  
3 duration. Ms. Botts did all of this at an age and time in her  
4 life when involvement in this sort of long-term complex  
5 commitment can be especially challenging, not to mention  
6 unattractive. She served her post well.

7 Plaintiffs' counsel has considerable expertise and depth  
8 of experience in consumer protection class action as I said,  
9 including similar COVID and education COVID litigation.

10 I'm going to move now to the motion for an award of  
11 attorneys' fees and for the service award. And again, I'm  
12 talking of the currently pending motion at ECF 101.

13 There are two main methods for calculating the  
14 reasonableness of attorneys' fees: The Lodestar method and  
15 the percentage-of-recovery method. The Lodestar method  
16 calculates reasonable fees by multiplying the number of  
17 reasonable hours, expended times of reasonable rate, while the  
18 percentage-of-recovery method considers the portion of the  
19 total settlement fund that will go to attorneys' fees.

20 Awarding attorneys' fees in a percentage-of-recovery basis is  
21 appropriate here when the proposed settlement creates a common  
22 fund for the class, as in this action. The Court has  
23 regularly awarded attorneys' fees using a  
24 percentage-of-recovery method with a Lodestar crosscheck. The  
25 Court is satisfied that there is clear consensus among the

1 federal and state courts, consistent with Supreme Court  
2 precedent, that the award of attorneys' fees in common fund  
3 cases should be based on a percentage of recovery. The Fourth  
4 Circuit has explained awarding fees as a percentage of the  
5 common fund, quote, "holds the beneficiaries of a judgment or  
6 settlement responsible for compensating the counsel who  
7 obtained the judgment or settlement for them." End quote.  
8 The Court also agrees that awarding one-third of the  
9 settlement fund is reasonable, pursuant to the parties'  
10 Settlement Agreement and addendum, and the defendant does not  
11 oppose class counsel's request for an additional award of  
12 attorneys' fees of one-third of the non-reversionary cash  
13 common fund amounting to \$574,869.23. The Court also  
14 appreciates footnote 4 at page 5 of the memo at ECF 101-1  
15 regarding the 333 additional students and its findings are  
16 unaffected by it.

17 When considering the reasonableness of  
18 percentage-of-recovery attorneys' fee award, district courts  
19 in the Fourth Circuit have analyzed the following seven  
20 factors: The results obtained for class -- this is the most  
21 critical factor in calculating the reasonable fee award. In  
22 this case, the degree of success is substantial. Counsel has  
23 represented and the Court has no reason to doubt that this  
24 proposed settlement is one of the most favorable settlements  
25 of similar claims against a college or university to date. To

1 the Court's understanding, no analogous pandemic-related claim  
2 against a college or university has gone to trial. So the  
3 scope of breadth of potential damages is hard to estimate  
4 beyond conjecture, but there have been cases resulting in  
5 defense wins at Summary Judgment.

6 The second factor is the quality, scale, and efficiency  
7 of the attorneys involved. As set forth earlier, class  
8 counsel has decades of nationwide consumer protection in  
9 general consumer class action experience and no doubt that  
10 experience produced the beneficial results for his clients in  
11 this case.

12 As to the third factor, that is, the risk of nonpayment,  
13 class counsel litigated this matter on a contingent basis  
14 risking their own time and resources in litigation that  
15 involved novel legal theories and unprecedented facts. As set  
16 forth in *Behrens v. Wometco Enterprises* at 118 F.R.D. 534 out  
17 of the Southern District of Florida, quote, "Very few lawyers  
18 can take on the representation of a class client given the  
19 investment of substantial time, effort, and money, especially  
20 in light of the risks of recovering nothing." End quote.

21 Further, pursuant to *Good v. West Virginia-American Water*  
22 *Company*, risks relevant to assessing an atypically large or  
23 small fee request are the distinctive risks specific to a  
24 particular litigation. That was out of the Southern District  
25 of West Virginia in 2017.

1 As set forth earlier, if this matter had proceeded in  
2 litigation, plaintiffs would have borne considerable  
3 additional risks, including contested class certification,  
4 possibility of an interlocutory appeal pursuant to Rule 23(f),  
5 dispositive motions practice and potential appeals, I would  
6 say probable appeals, and trial.

7 As to the fourth factor, that is, objections by members  
8 of the class to the settlement terms and/or fees requested by  
9 counsel, I've already addressed the Bernier objection which  
10 took no issue with the requested attorneys' fees at that time  
11 and she has not renewed and no class member has objected to  
12 the attorneys' fees request that the Court ruled on in April  
13 or that I'm ruling on now, or the class representative award  
14 for Ms. Botts which was clearly noted in the notice to class  
15 members pursuant to the class administrative report which was  
16 sent out in February of 2023.

17 Such a lack of opposition strongly supports a finding of  
18 adequacy for the attitude of the members of the class as  
19 expressly directed or by failure to object after notice to the  
20 settlement is a proper consideration for the Court -- for the  
21 trial court. That's the *Flinn v. FMC Corp* case again.

22 The fifth factor is for me to consider awards in similar  
23 cases. Pursuant to Newberg on class actions, which is of  
24 course the Bible of class actions, a one-third percentage of  
25 recovery award is consistent with studies performed over

1 decades. Quote, "Empirical studies show that regardless of  
2 whether the percentage method or the Lodestar method is used,  
3 fee awards in the class actions average around one-third of  
4 their recovery." End quote.

5 The sixth factor is the complexity and duration of the  
6 case. As described earlier, this is a relatively novel case.  
7 It lasted I think at this point more than three years, but  
8 certainly in that neighborhood. And it involved unique,  
9 factual circumstances stemming from a once-in-a-lifetime  
10 pandemic hopefully, and hotly contested legal claims.

11 The seventh factor is the issue of public policy which  
12 favors the requested award or risk of nonpayment exists  
13 because the relevant public policy considerations involve  
14 balancing of the policy goals of encouraging counsel to pursue  
15 meritorious litigation.

16 With respect to the Lodestar crosscheck, this confirms  
17 the reasonableness of class counsel's request. It's not  
18 required to determine the fairness of the fee, but it's sort  
19 of a safety net. So when we do a percentage-of-recovery  
20 method, we do that Lodestar crosscheck to hold ourselves  
21 accountable.

22 As of the date of the motion, class counsel incurred an  
23 additional \$199,810 in fees to obtain the recovery attendant  
24 to the second phase in the addendum. This results in a fee  
25 multiplier of 2.33 which is justified, given the contingent

1 nature of the case and the significant risk incurred, as well  
2 as the excellent result achieved. It's on the low end of the  
3 multipliers generally considered acceptable.

4 With respect to plaintiffs' request for a service award,  
5 the plaintiffs request an award of \$3,266.30 since the last  
6 award for Ms. Botts' service to the class attendant to the  
7 second phase and addendum. This is less than -- I should say  
8 the total service award is less than two-tenths of one percent  
9 of the settlement fund. And the requested service award here  
10 is well below the national average still, even adding that  
11 extra almost 3.3 or \$3,000 to that initial \$12,500 pursuant to  
12 an empirical study published in 2006 which suggests that the  
13 average award for class rep is about \$16,000. That's at the  
14 updated Volume V of Newberg on class actions at Section 17-8  
15 and that is in the Sixth edition.

16 As described earlier, Ms. Botts demonstrated a  
17 willingness to step forward and publicly litigate this case,  
18 knowing that her own recovery would be subordinated to that of  
19 her class. She took an active role in the case over a number  
20 of years, as I mentioned earlier.

21 I also note that the defendant has posed no objection to  
22 the award and no class member has objected to it as of this  
23 date. Service awards in this range are reasonable and I have  
24 -- the Court, this Court has approved them in the past and I'm  
25 going to do that here.

1 I don't have any other additional findings that I think  
2 are required, but if counsel think I have failed to hit any  
3 issue or you want me to be more thorough about any particular  
4 feature, I'm happy to do that.

5 Mr. Soumilas?

6 **MR. SOUMILAS:** Your Honor, I think your recitation  
7 from the bench is very thorough. It hit all the issues that I  
8 had. To the extent the Court had a question, it has been a  
9 little bit more than three-and-a-half years since the  
10 commencement of this lawsuit, more than that since we've  
11 started researching and investigating the claim.

12 And just one anecdotal note, at 106 we show the Court  
13 that the notice for Phase 2 is tremendous. Really we got 99  
14 percent e-mail reach. There were only 25 bounce-backs and 24  
15 of the 25 got through by mail. So 99.9 is tremendous reach.

16 **THE COURT:** That's just amazing.

17 **MR. SOUMILAS:** This is not a passive class. I can  
18 tell you that we received--

19 **THE COURT:** I could tell.

20 **MR. SOUMILAS:** --multiple calls and e-mails from  
21 parents, from students. I handled them personally, people  
22 from my office. Ms. Weiner had some, I know defense counsel  
23 had some. They're not passive.

24 **THE COURT:** People get emotional about this issue.

25 **MR. SOUMILAS:** But I think they're satisfied because



1 there's not a single new objection. As Your Honor said, the  
2 previous objection was--

3 **THE COURT:** I actually thought it was somewhat a  
4 feather in the cap of the quality of the student body of the  
5 Johns Hopkins University that these undercompensated students  
6 knew what was what when they made those phone calls.

7 **MR. SOUMILAS:** Yes, Your Honor.

8 **THE COURT:** So I appreciate that there was nobody  
9 asleep at the switch. So I understand that.

10 Mr. Cooper, Mr. Morgan, did you need me to address  
11 anything further? Would you like to make any additional  
12 comments for the record?

13 **MR. MORGAN:** No, Your Honor. We just thank the Court  
14 and the staff for the attention to this. We understand it's  
15 taken a lot of time and we appreciate the Court's work on it.

16 **THE COURT:** It's a very interesting case and I'm  
17 happy to do it. So I'm going to enter the proposed orders and  
18 I don't think it's really necessary, I think, for me to  
19 include this in an order, but I certainly expect to hear from  
20 counsel with a motion to reopen the case to address that issue  
21 that we've discussed earlier. And again, I would just ask  
22 that any papers submitted include some kind of explanation or  
23 representation that counsel have satisfied themselves that  
24 you've kind of exhausted the number or exhausted the student  
25 population that could possibly be unaccounted for before

1 today. And as I said, just call, or e-mail, or whatever works  
2 for you to just let us know here in chambers that those papers  
3 are pending so that we can put this to rest and the parties  
4 and counsel can move on to higher ground.

5 **MR. SOUMILAS:** Thank you, Your Honor.

6 **THE COURT:** All right, thank you so much for your  
7 very clear and thorough work. It's been a pleasure. Court is  
8 adjourned.

9 **(Proceeding concluded at 2:49 p.m.)**

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## 1 CERTIFICATE OF OFFICIAL REPORTER

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5 I, Nadine M. Bachmann, Certified Realtime Reporter  
6 and Registered Merit Reporter, in and for the United States  
7 District Court for the District of Maryland, do hereby  
8 certify, pursuant to 28 U.S.C. § 753, that the foregoing is a  
9 true and correct transcript of the stenographically-reported  
10 proceedings held in the above-entitled matter and that the  
11 transcript page format is in conformance with the regulations  
12 of the Judicial Conference of the United States.

13  
14 Dated this 12th day of January, 2024.

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18 \_\_\_\_\_  
19 NADINE M. BACHMANN, CRR, RMR  
20 FEDERAL OFFICIAL COURT REPORTER  
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				<p style="text-align: center;"><b>U</b></p> <p><b>U.S.C</b> [1] - 31:8  <b>ultimately</b> [2] - 7:13, 9:9  <b>umbrellas</b> [1] - 7:19  <b>unaccounted</b> [1] - 29:25  <b>unaffected</b> [1] - 23:16  <b>unanticipated</b> [1] - 3:5  <b>unattractive</b> [1] - 22:6  <b>uncomfortable</b> [1] - 9:16  <b>under</b> [6] - 13:4, 14:2, 14:12, 15:2, 16:24, 18:9  <b>undercompensated</b> [6] - 12:9, 13:13, 13:21, 14:2, 18:8, 29:5  <b>undergrad</b> [1] - 6:15</p>

<p><b>understood</b> [1] - 11:12  <b>undertook</b> [1] - 11:14  <b>unfold</b> [1] - 3:6  <b>unfortunately</b> [1] - 5:6  <b>uniform</b> [2] - 6:16, 7:20  <b>unique</b> [1] - 26:8  <b>United</b> [2] - 31:6, 31:12  <b>UNITED</b> [2] - 1:1, 1:9  <b>universe</b> [1] - 10:6  <b>universities</b> [1] - 19:9  <b>university</b> [3] - 7:18, 23:25, 24:2  <b>UNIVERSITY</b> [1] - 1:6  <b>University</b> [8] - 2:4, 5:13, 7:9, 7:11, 11:14, 13:6, 19:18, 29:5  <b>unknown</b> [1] - 10:6  <b>unless</b> [1] - 8:11  <b>unopposed</b> [1] - 4:6  <b>unprecedented</b> [1] - 24:15  <b>up</b> [5] - 5:24, 8:14, 11:3, 12:2, 12:5  <b>updated</b> [1] - 27:14  <b>URQUHART</b> [2] - 1:19, 1:22  <b>USC</b> [1] - 16:6</p>	<p>17:21, 19:20  <b>weighed</b> [1] - 21:10  <b>weighing</b> [1] - 20:1  <b>Weiner</b> [3] - 2:10, 3:13, 28:22  <b>WEINER</b> [3] - 1:16, 1:16, 2:12  <b>West</b> [3] - 19:22, 24:21, 24:25  <b>whole</b> [1] - 9:24  <b>willingness</b> [1] - 27:17  <b>wins</b> [1] - 24:5  <b>wish</b> [1] - 6:5  <b>wishes</b> [1] - 4:21  <b>Wometco</b> [1] - 24:16  <b>wondering</b> [2] - 8:3, 8:8  <b>works</b> [1] - 30:1  <b>worth</b> [1] - 20:25  <b>wrap</b> [2] - 8:14, 11:2  <b>wrapped</b> [1] - 12:2  <b>wrench</b> [1] - 6:8  <b>written</b> [1] - 18:5</p>
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<b>W</b>	<p><b>§</b> [2] - 16:6, 31:8</p>
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# **Exhibit 3**

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

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,  
*Defendant.*

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

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

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Johns Hopkins University ("Defendant" or "Johns Hopkins") hereby responds to Plaintiff Elena Botts' Fourth Set of Interrogatories.

**GENERAL OBJECTIONS**

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

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

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

obtainable, to the extent it exists, from other sources that are more convenient, less burdensome, or less expensive. Defendant further objects to the Interrogatories to the extent they require defendant to search sources that are not reasonably accessible.

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

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

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

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

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 15:**

State the total number of students whom You contend should be included in the Class and to whom, as of the date of these Interrogatories, notice of the parties' settlement has not yet been sent (the "Phase 3 students").

**RESPONSE TO INTERROGATORY NO. 15:**

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

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

John Hopkins contends that an additional 2,607 students should be included in the Class.

**INTERROGATORY NO. 16:**

Set forth, in detail, the process by which You identified the Phase 3 students and, without limitation on the foregoing, identify: the person(s) principally responsible for and/or who supervised the process; You the data source(s) and/or system(s) of record that You upon which

You relied in connection with the process; and the parameters of the queries, filters, search criteria, and/or transaction code(s) You used in the process.

**RESPONSE TO INTERROGATORY NO. 16:**

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

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

In response to inquiries from certain students who had not received notice of the settlement, Tom McDermott, Associate Vice Provost for Financial Aid, reviewed those students’ individual account and enrollment records and noticed that these students were not included in the registration data extracted from the Student Information System (SIS) that was frozen on the second week of the semester (census date). Mr. McDermott revisited the base list of registered students—students who took at least one class in-person during the Spring 2020 term—with Elizabeth Cronin, Associate Director at Johns Hopkins’ Office of Institutional Research, and noticed that the frozen census data excluded students who enrolled in Spring 2020 classes after the census date. Mr.



McDermott and Ms. Cronin determined that creating a base list of registered students using “live” registration data rather than data frozen as of the census date could yield additional students that would fit into the class definition. “Live” registration data would include any student who had a confirmed enrollment for at least one in-person course mapped to the Spring 2020 term, regardless of when that student enrolled.

After Ms. Cronin generated an expanded base list of students who took at least one class in-person during the Spring 2020 term based on “live” registration data, Mr. McDermott then applied the expanded payment search parameters that are described in Johns Hopkins’ Responses to Interrogatories No. 9, 10, and 13. Specifically, Mr. McDermott applied an extended date range (October 15, 2019 through June 12, 2020) and all the payment transaction codes posted to student accounts during that extended date range. This generated 2,510 additional individuals who fall within the Class.

Next, in order to be as complete and thorough as reasonably possible, Johns Hopkins undertook to conduct a manual, file-by-file review of all remaining students from the expanded base list of registered students for Spring 2020. Johns Hopkins retained an outside consultant, Financial Aid Services, LLC (“FAS”), to provide additional staff for this review. FAS has worked with Johns Hopkins on numerous matters for nearly 14 years, including for interim financial aid staffing and Title IV assessments. Under the supervision and instruction of LaToya Thompson, Johns Hopkins’ Director of Student Accounts, FAS reviewed any payment activity occurring in the time period of July 1, 2019 through June 30, 202 for these remaining students, in order to identify any students who made payments towards Spring 2020 tuition or fees. Finally, after FAS completed its review, Ms. Thompson oversaw an internal quality assurance review of FAS’ findings. This process—both FAS’ comprehensive review and Johns Hopkins’ ensuing quality

assurance review—generated 97 additional students who fall within the Class. Together with the 2,510 students generated by applying expanded payment search criteria to the expanded base list of registered students yields a total of 2,607 additional class members. The list of 2,607 individuals was sent back to Institutional Research for the addition of contact information, as well as Spring 2020 tuition and fee charges, via SIS.

**INTERROGATORY NO. 17:**

Set forth, in detail, the reasons that You did not identify the Phase 3 students prior to the execution of the parties' Addendum to Class Action Settlement and Release, which was filed on July 31, 2023.

**RESPONSE TO INTERROGATORY NO. 17:**

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

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

In prior phases, Johns Hopkins relied on registration data extracted from the SIS that was frozen on the second week of the semester (census date). At Johns Hopkins, census date data is generally considered comprehensive and, for that reason, it serves as the basis for much of Johns Hopkins' reporting, including IPEDS and other federal reports. However, census date data may not capture every confirmed enrollment for a given term if, in the case here, students enroll in courses after the second week of the semester. For example, Bloomberg School of Public Health and Carey Business School, have structured modules which only take place, and are only available for registration, during the latter portion of the semester. By expanding the base list of registered students using "live" registration data, John Hopkins ensures that every student who had a confirmed enrollment in at least one in-person course during Spring 2020, regardless of when enrollment occurred, has been assessed for possible inclusion in the Settlement Class.

**INTERROGATORY NO. 18:**

Describe the measures You took to reasonably assure Yourself that You have identified all students who are members of the Class.

**RESPONSE TO INTERROGATORY NO. 18:**

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague, ambiguous, overbroad, and unduly burdensome as to the terms "reasonably assure" and "all." Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party's claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further

objects to this Interrogatory to the extent it seeks specific student's financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

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

Johns Hopkins incorporates its Responses to Interrogatories Nos. 9, 10, 12, 13, 14, 16.

DATED: March 15, 2024

/s/ Crystal Nix-Hines

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*Attorneys for Defendant,  
Johns Hopkins University*

**VERIFICATION**

I, Thomas P. McDermott, III, at Johns Hopkins University, have reviewed the above Responses and Objections to Plaintiff's Fourth Set of Interrogatories, and the facts stated therein regarding Johns Hopkins University are true and correct to the best of my knowledge, information, and belief.

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

Executed on March 15, 2024, at Baltimore, Maryland.



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Thomas P. McDermott, III

**Certificate of Service**

I hereby certify that the foregoing Responses and Objections to Plaintiff's Fourth Set of Interrogatories was served on all counsel of record on March 15, 2024.

*/s/ Karen Bobrow* \_\_\_\_\_

Karen Bobrow

# **Exhibit 4**

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

**SUPPLEMENTAL DECLARATION OF THOMAS P. MCDERMOTT, III**

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

1. My employer is Johns Hopkins University (“Johns Hopkins”). I have worked for Johns Hopkins continuously since 1997. My current job title is Associate Vice Provost for Financial Aid. I have held this position since 2022.
2. I make this declaration in addition to and to supplement my first Declaration in this matter, dated July 28, 2023 (“First McDermott Declaration”).
3. I have reviewed and am familiar with Johns Hopkins’ March 15, 2024, responses to Plaintiff Elena Botts’ Fourth Set of Interrogatories.
4. As explained in Johns Hopkins Responses to Plaintiff’s Third Interrogatories, which I reviewed, and the First McDermott Declaration, the identification of students in the Settlement Class for Phase One and Phase Two was determined through two main steps. First, Johns Hopkins’ Office of Institutional Research generated a base list of registered students who took at least one class in-person during the Spring 2020 term, using data extracted from the Student Information System (SIS) that was locked in place or “frozen” on the second week of the semester (census date). Second, that list was then sent to Student Financial Services to determine, based on a set of dates and transactions codes, which students made payments and/or received loans to pay Spring 2020 tuition and fees. The transaction codes and dates applied in Phase One and Phase Two are laid out in the First McDermott Declaration, paragraphs 13 through 16, and Johns Hopkins Responses to Plaintiff’s Third Interrogatories Nos. 9 through 14.
5. I understand that JND, the Settlement Administrator in this case, received queries from individuals who claimed to be Class members but were not included in the Class list that was transmitted to JND as part of the Second Phase of the Settlement. In or around



September 2023, I was tasked with investigating these individuals to determine whether they should be included in the Class.

6. As part of my review, I revisited with Elizabeth Cronin, the associate director at Institutional Research, the base list of registered students based on the two-week frozen census. Ms. Cronin and I determined that creating a base list of registered students using “live” registration data, rather than data frozen as of the census date, could yield additional students that would fit into the Class definition. “Live” registration data includes any confirmed enrollment for a given term, regardless of when the student registered for courses. A “confirmed enrollment” is any enrollment that is not dropped before the end of the applicable add/drop period. I coordinated with Ms. Cronin to generate an expanded list of registered students, this time relying on live and not frozen registration data, who had a confirmed enrollment in at least one in-person course during the Spring 2020 term.
7. When I reviewed the student records for the individuals who had queried JND about not being included in the Class, I noticed that some of these students were not included in the list of registered students based on the two-week frozen census, but were included in the expanded list of registered students based on live registration data.
8. I understand, based on discussions with staff at Institutional Research, that there are several reasons why students would not be included in the two-week census, but would still have valid enrollment activity in the Spring 2020 term. My understanding is that there are certain programs at Johns Hopkins, such as, for example, doctoral programs, where students do not register for classes themselves, but rather they are registered for classes by their respective departments, and such registration activity may not occur until after the two-week census date. Additionally, I understand that certain schools at Johns Hopkins, such as Bloomberg School of Public Health and Carey Business School, have structured modules which only take place, and are only available for registration, during the latter portion of the semester.
9. The number of students which appeared on the expanded list of registered students (based on live registration data) and who were not already included in the Class during Phase One or Phase Two, was 7,005. I assessed this list of 7,005 students for payment information associated with the Spring 2020 term by applying the dates and payment codes utilized for Phase One and Phase Two. The payment criteria established in Phase One and Phase Two, and applied again here, is designed to capture payments by any means, including direct payment, payment from college savings plans, loans, etc. I determined that 2,538 of the 7,005 individuals met the payment criteria. I removed 28 graduate students who were not charged any tuition or fees for Spring 2020, resulting in 2,510 individuals who fall within the Class.
10. For the remaining 4,469 students (7,005 less 2,538 already meeting the payment criteria), Johns Hopkins undertook a manual file-by-file review of every student’s payment records to identify any other student who paid tuition or fees for Spring 2020. To complete this review, Johns Hopkins retained Financial Aid Services, LLC (“FAS”), a well-recognized provider of financial aid services, consultants, and interim staff to colleges and universities. Johns Hopkins has retained FAS on numerous matters for nearly 14 years, including for

interim financial aid staffing and Title IV assessments. FAS staff was already familiar with SIS and payment transaction codes.

11. Following the comprehensive file-by-file review, Johns Hopkins identified an additional 97 individuals who made payments towards Spring 2020 tuition or fees and should be included in the Class. The remaining 4,372 students are appropriately excluded from the Class, even though they registered for at least one in-person course at Johns Hopkins' in Spring 2020, for various reasons. The majority of Johns Hopkins student population is comprised of graduate students, and a large portion of Johns Hopkins' graduate students are not charged and/or do not pay tuition and fees, either because their academic programs cover tuition and fees (such as PhD programs), or those students' tuition and fees are covered by third party sources (such as their employers or other organizations). This is similarly true for the 4,372 students excluded from the Class here. First, many of these students, such as PhD students, who enrolled in courses were not charged or were credited for tuition and fees. Second, many of these students had their tuition and fees entirely covered by third party sources, such as employers, grants, or scholarships. Finally, a small portion of the students were excluded from the class because they withdrew from courses after enrolling and Johns Hopkins already credited their accounts.
12. The 97 individuals identified by the file-by-file review together with the 2,510 students generated by applying expanded payment search criteria to the expanded base list of registered students yields a total of 2,607 additional class members. I sent the list of 2,607 individuals back to Institutional Research for the addition of contact information, as well as Spring 2020 tuition and fee charges, via SIS.
13. By virtue of the steps described above, as well as the steps described in Johns Hopkins Responses to Plaintiff's Third Interrogatories and the First McDermott Declaration, Johns Hopkins has, in effect, assessed every student with a confirmed enrollment in at least one in-person course in Spring 2020 for possible inclusion in the Class. I believe that there are no other students that could be identified for inclusion in the Class.

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

Executed on March 15, 2024



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Thomas P. McDermott, III

# **Exhibit 5**

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

**DECLARATION OF LATOYA THOMPSON**

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

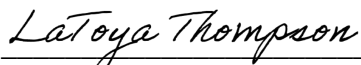
1. My employer is Johns Hopkins University (“Johns Hopkins”). I have worked for Johns Hopkins continuously since June 2023. My current job title is Director of Student Accounts, and my role falls within the Student Enrollment and Account Management group at Johns Hopkins.
2. During my time as an employee of Johns Hopkins and in my capacity as Director of Student Accounts, I have become familiar with the capabilities of Johns Hopkins’ Student Information System (“SIS”), including the categories of data stored within SIS and the means by which specific information may be queried and retrieved from it.
3. I understand that Johns Hopkins has undertaken to identify the students who paid Johns Hopkins Spring Semester 2020 tuition and/or fees for in-person educational services, whose tuition and fees have not been refunded.
4. I have reviewed and am familiar with Johns Hopkins’ March 15, 2024, responses to Plaintiff Elena Botts’ Fourth Set of Interrogatories.
5. I oversaw the manual, file-by-file review of student payment records by Financial Aid Services, LLC (“FAS”), referenced in Johns Hopkins’ Response to Interrogatory No. 16. From November 17 through December 8, 2023, four FAS contractors remotely accessed JHU’s SIS to review payment information for 4,469 students. In total, FAS contractors spent over 260 hours on this file-by-file review.
6. FAS contractors were instructed to document any students who made payments towards Spring 2020 tuition or fees. I prepared a Job Aid to assist FAS in its manual file-by-file, which is attached hereto to my declaration as **Exhibit 1**. The Job Aid provides instructions regarding: the objective of the review; the date range of payment activity to be reviewed;

the transaction and payments codes to be reviewed. The Job Aid was provided to every FAS contractor that participated in the manual file-by-file review. Additionally, four of Johns Hopkins' student account specialists on my team were made available to FAS contractors to answer questions or provide assistance.

7. FAS was instructed to review payment activity dating from July 1, 2019 through June 30, 2021 to identify any payment activity possibly applicable to Spring 2020 tuition or fees. *See Exhibit 1* at pp. 3, 5. FAS was instructed to review a list of transaction and payment codes for any payment activity that may have applied towards Spring 2020 Tuition and Fees. *See Exhibit 1* at pp. 7-10. The Job Aid contains the same comprehensive list of transaction and payment codes that were applied in earlier phases of this case. At the end of FAS's review, FAS identified an additional 799 students who may be eligible for inclusion in the Settlement Class.
8. From December 8, 2023 to December 12, 2023, I oversaw an internal quality assurance review of FAS's output. First, I conducted a spot check of students excluded by FAS from the Class to confirm FAS' findings, and I found no errors. Second, to confirm the correctness of students included in the Class by FAS, a team of fourteen Johns Hopkins student account specialists, overseen by me, conducted a review of all of the 799 individuals identified by FAS.
9. Following Johns Hopkins's internal review, I determined that, of the 799 individuals identified by FAS, 97 students had valid net payment activity applicable to the Spring 2020 term and should be included in the Class. The remaining 702 students are appropriately excluded from the class for various reasons. First, the majority of these students are appropriately excluded from the Class because their tuition and fees were covered by third party sources, such as employers or other organizations. These students were identified erroneously by FAS because FAS was over-inclusive in its assessment of payment transactions by third party payors. Second, a portion of these students are appropriately excluded from the Class because they already had credits on their accounts for courses from which they withdrew, which FAS had not accounted for. Finally, a portion of these students are appropriately excluded because they were not charged any tuition or fees for Spring 2020.

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

Executed on March 15, 2024

  
\_\_\_\_\_  
LaToya Thompson

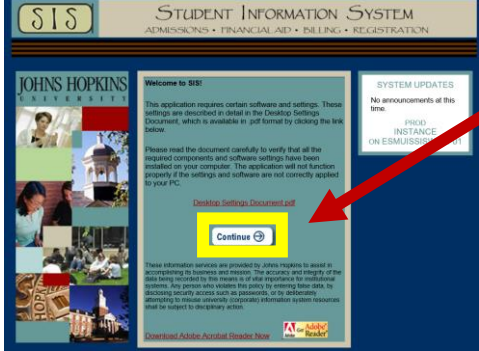
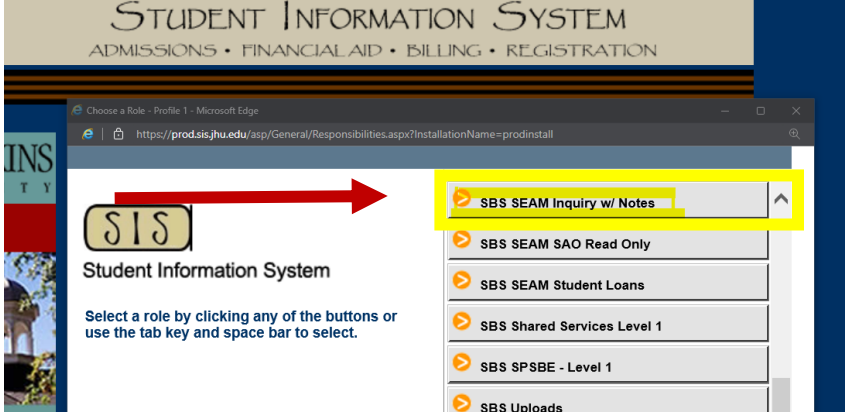
# Exhibit 1



### Extracting & Reviewing Student Account Activity – Job Aid

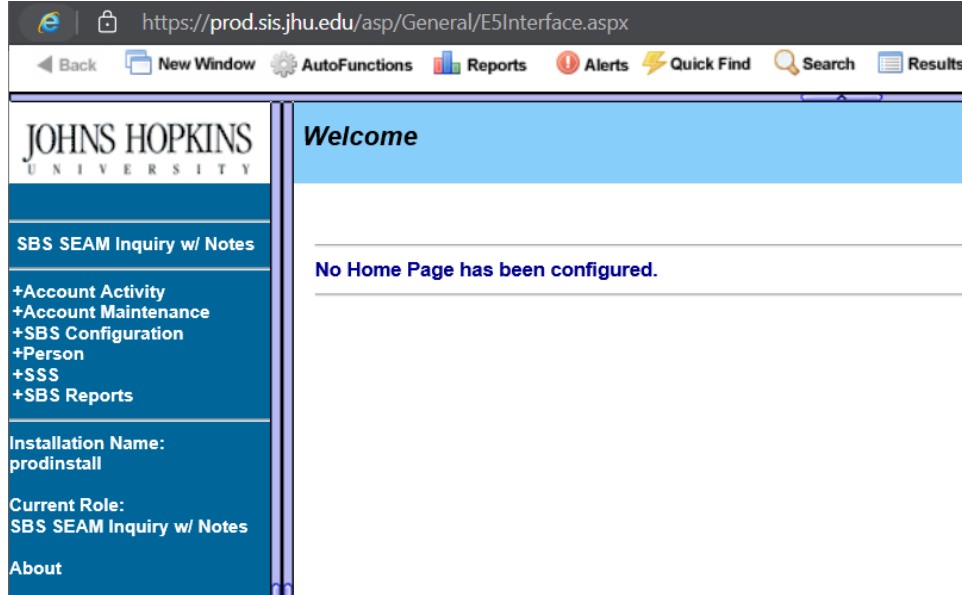
<b>Functional Area</b>	SEAM Student Accounts
<b>Process Name</b>	Extracting & Reviewing Student Account Activity
<b>Process Description</b>	This job aid provides instruction on how to extract student account history into excel and review student account activity.
<b>Primary Ownership</b>	SEAM Student Accounts

### Instructions: Extracting Student Account Activity into an Excel File

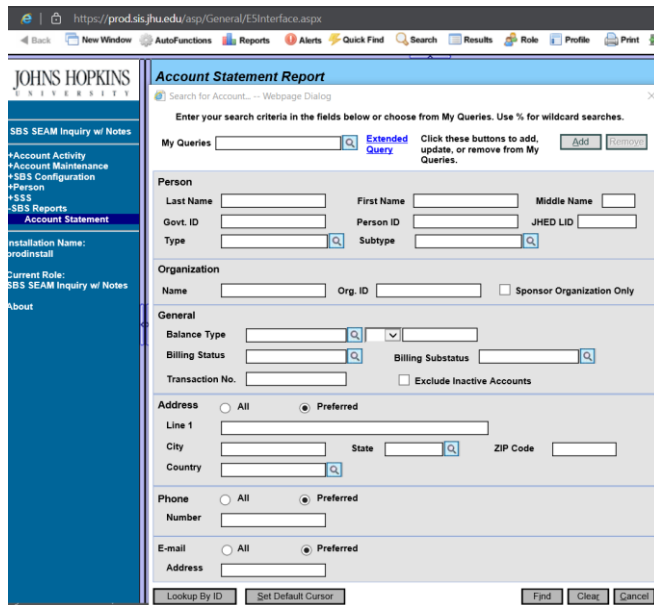
Step	Instruction
1	<ul style="list-style-type: none"> <li><b>IMPORTANT: Before you attempt to access SIS Admin, please make sure that you have allowed pop ups.</b></li> <li>Log into SIS Admin using Microsoft Edge and this <a href="#">link</a></li> <li>Next, click on the <b>Continue</b> button (shown below):</li> </ul>  <ul style="list-style-type: none"> <li>Once you click <i>Continue</i>, a pop-up window will appear with the SIS roles assigned to you, select <b>SBS SEAM INQUIRY W/NOTES</b>:</li> </ul> 



2 Once you select the role, you should then see an application that looks like the following:



3 Click **SBS Reports**, followed by **Account Statement**, and a search box will appear:



4 Type the student's 6-character **Hopkins ID** into the **Person ID** field and click **FIND**





Search for Account... - Webpage Dialog

Enter your search criteria in the fields below or choose from My Queries. Use % for wildcard searches.

My Queries

Person

Last Name  First Name  Middle Name

Govt. ID  **Person ID: 1E09D5** JHED LID

Type  Subtype

Organization

Name  Org. ID   Sponsor Organization Only

General

Balance Type

Billing Status  Billing Substatus

Transaction No.   Exclude Inactive Accounts

Address  All  Preferred

Line 1

City  State  ZIP Code

Country

Phone  All  Preferred

Number

E-mail  All  Preferred

Address

5 Once you enter the student ID and click FIND, you will then see the screen below:

Account Statement Report- **Vong, [redacted]**

Person ID: **1E09D5** JHED LID: **tvong2** Status: **Current**

Use Billing Address Hierarchy  Use Address

Include Memo Transactions

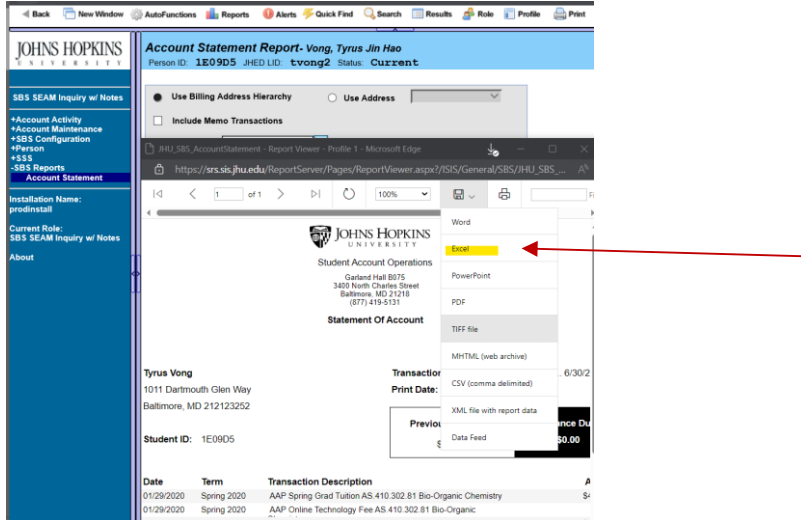
Select Periods

Start Date **7-1-2019** End Date **6-30-2021**

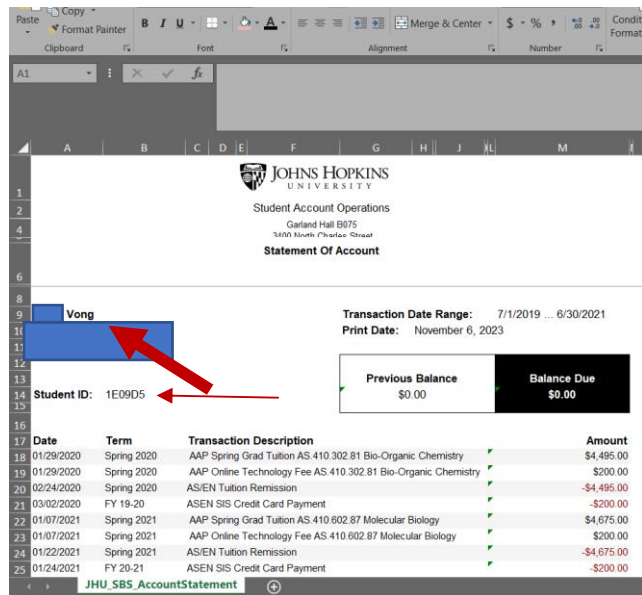
1. Verify the student **Name** and **Hopkins ID** match the student you want to review
2. Enter the start date: 7/1/2019, then enter the end date: 6/30/2021; click **View Report**.



6 Once you click **View Report**, a window will appear, select **Excel** to download the account activity for the date range selected to an excel file:



7 Once you select Excel, an excel file should open with the account activity:



Again, verify the student name and ID match the student you intend to review.



**Note:** It may be cleaner and easier to read if you copy all of the account activity to another tab, and delete any blank columns, like the screen shot below (delete the total charges and credit line - see red line in image below; that line is not needed). Once you have the excel file opened, proceed to the section [Reviewing Student Account Activity](#) for instructions on how to determine if a student made payments towards spring 2020 tuition and fees:

Date	Term	Transaction Description	Amount
01/29/2020	Spring 2020	AAP Spring Grad Tuition AS.410.302.81 Bio-Organic Chemistry	\$4,495.00
01/29/2020	Spring 2020	AAP Online Technology Fee AS.410.302.81 Bio-Organic Chemistry	\$200.00
02/24/2020	Spring 2020	AS/EN Tuition Remission	(\$4,495.00)
03/02/2020	FY 19-20	ASEN SIS Credit Card Payment	(\$200.00)
01/07/2021	Spring 2021	AAP Spring Grad Tuition AS.410.602.87 Molecular Biology	\$4,675.00
01/07/2021	Spring 2021	AAP Online Technology Fee AS.410.602.87 Molecular Biology	\$200.00
01/22/2021	Spring 2021	AS/EN Tuition Remission	(\$4,675.00)
01/24/2021	FY 20-21	ASEN SIS Credit Card Payment	(\$200.00)
02/11/2021	Fall 2020	AAP Continuous Enrollment Fee- 202.452.1940	\$75.00
04/06/2021	FY 20-21	ASEN SIS Credit Card Payment	(\$75.00)
<b>Total Charges and Credits</b>			<del>\$0.00</del>

### Instructions: Reviewing Student Account Activity

**For this review, we need to document any students who made payments towards spring 2020 tuition and fees. Please refer to the [Charges](#) and [Payments](#) section for the transcodes we need to review for this effort.**

#### Identifying the Semester or Academic Year

- When you extract the transactions to Excel, the term may be found here:

Student ID:	1E09D5	Pre
Date	Term	Transaction Description
01/29/2020	Spring 2020	AAP Spring Grad Tuition AS.410.302.81 Bio-C
01/29/2020	Spring 2020	AAP Online Technology Fee AS.410.302.81 B
02/24/2020	Spring 2020	AS/EN Tuition Remission

- NOTE: Payments and charges may be posted to the semester, such as fall or spring, or to the academic year. The semseters/years we are looking for include:**
  - Any semester between fall 2019 -spring 2021, all-inclusive, AND
  - Fiscal (academic years) 2019-2020 and 2020-2021
  - Public Health is the only JHU school that bills per terms. Term 1 and Term 2 are fall; Term 3 and Term 4 are spring; S and S1 are summer**

#### Verifying Net Tuition & Fees Charges and Net Payments

Students may have received refunds of payments or the spring 2020 charges may have been removed. We need to reduce any paymen ts by refunds processed to determine the net payment amount. Likewise, students may have had all of their spring 2020 tuition/.fees removed – we need to confirm the student had net charges for spring 2020.

Payments and removal of charges on the account may be identified with a negative sign before the amount (**-\$x.xx**) while charges and student refunds do not. Please see [Refund Codes](#), for transcodes used to refund money back to the students. **Note** the credit/debit card transactions are included, as are the e-check payments; refunds processed back to those payment methods will appear as a positive payment on the account.

**Important points:**

- Students may have made an over-payment in fall 2019 that resulted in a credit that was applied to spring 2020 tuition/fees.
  - For these students, we want to capture only the amount of that payment that was applied to spring 2020, plus any subsequent payments applied to spring 2020 as well
  - **Example Student:**

Transaction Date	Effective Date	Acad/Date Val Period	Transaction #	Transaction Code	Amount	Running Balance
12-01-2019	11-30-2019	AE Spring 2020	0000705	LIUGF1-UG Health Insur F1J1	\$1,103.00	\$22,201.00
12-01-2019	11-30-2019	AE Spring 2020	6559322	GT2FUx- Tu Spr UG ENGR	\$27,675.00	\$21,148.00
09-12-2019	09-12-2019	FY 19-20	6470993	LPERFx - Electronic Refund	\$9,000.00	-\$6,527.00
08-13-2019	08-12-2019	FY 19-20	6391879	SPW4xx- Wire Pmt (bk 4)	-\$50,000.00	-\$15,527.00
07-07-2019	07-07-2019	FY 19-20	6326890	LHF1xx- Res Hall Bradford	\$5,695.00	\$34,473.00
07-03-2019	07-02-2019	AE Fall 2019	6315440	LIUGF1- UG Health Insur F1J1	\$1,103.00	\$28,778.00
07-02-2019	07-01-2019	AE Fall 2019	6305213	GT1FUx- Tu Fall UG ENGR	\$27,675.00	\$27,675.00
05-30-2019	05-30-2019	AE Summer 2019	6261822	LPERFx - Electronic Refund	\$3,864.42	\$0.00

- Students may have paid all or part of their spring 2020 balance after that semester ended. To capture that activity, we must review the student’s payment activity through spring 2021. Again, a payment may have been made towards one or more semesters, we only need to document the amount applied to spring 2020 tuition and fees.
- Students may have paid their spring 2020 balance via payment plan; plan enrollment for spring 2020 began in fall 2019 and continued into spring 2020.
  - Payment plans are posted to the semester – **look only for payment plan transactions for spring 2020**, and document the *NET* amount of that activity. For example, a student may only have one transaction related to spring 2020 payment plan.
  - **Example Student:**

Transaction Date	Effective Date	Acad/Date Val Period	Transaction #	Transaction Code	Amount	Running Balance
04-27-2020	04-27-2020	FY 19-20	6763790	EPCCPW- VMC PW Pymt	-\$175.00	\$0.00
01-11-2020	01-10-2020	BE Spring 2020	6615647	EFXGxx- Graduation Fee	\$175.00	\$175.00
01-02-2020	01-01-2020	FY 19-20	6593602	EFTMSPr Spring TMS Payment	-\$175.00	\$0.00
11-06-2019	11-06-2019	BE Spring 2020	6535461	EFR2xx- Spring Reg Fee	\$175.00	\$2,740.00
11-06-2019	11-06-2019	BE Spring 2020	6535460	ET2oxx- TUIT SPRING	\$2,565.00	\$2,565.00

- However, students may have more than one payment plan transaction for spring 2020. This may be due to the student adding or dropping a course, resulting in the need to adjust the payment plan budget OR the student may not have paid their plan balance in full. When that occurs any plan balance at the end of spring 2020 would be added back to the student’s account. Please do not include payment plans with a \$0 net payment when determining spring 2020 payments.
  - **Example Student:**



Person ID: **83DFD9** JHED LID: **yzhu151** Status: **Delinquent**

**Transactions** Alt+1

Acad. Period  Date Val. Period  Start Date  End Date

[Transactions](#)

Transaction Date	Effective Date	Acad/Date Val Period	Transaction #	Transaction Code	Amount	Running Balance
10-16-2023	10-13-2023	AE Fall 2023	9052538	SPPLFL- Fall Nelnet Plan	\$2,400.00	\$26,250.00
10-06-2023	10-05-2023	AE Fall 2023	9046568	SPPLFL- Fall Nelnet Plan	\$3,000.00	\$23,850.00
09-26-2023	09-24-2023	AE Fall 2023	9037982	SPPLFL- Fall Nelnet Plan	\$3,000.00	\$20,850.00
09-18-2023	09-15-2023	AE Fall 2023	9029156	SPPLFL- Fall Nelnet Plan	\$18,000.00	\$17,850.00
09-15-2023	09-13-2023	AE Fall 2023	9026705	SPPLFL- Fall Nelnet Plan	-\$150.00	-\$150.00
09-14-2023	09-13-2023	AE Fall 2023	9024220	SPPLFL- Fall Nelnet Plan	\$150.00	\$0.00
09-08-2023	09-08-2023	AE Fall 2023	9004780	LAIpxx- JH Health Ins Subsidy	-\$150.00	-\$150.00
07-21-2023	07-20-2023	AE Fall 2023	8867571	SPPLFL- Fall Nelnet Plan	-\$48,329.00	\$0.00
07-06-2023	07-05-2023	AE Fall 2023	8817510	SIHlxx- Health Insurance	\$1,168.50	\$48,329.00
07-03-2023	07-02-2023	AE Fall 2023	8805600	GT1FGx- Tu Fall ENGR	\$31,420.00	\$47,160.50

Charges to Review

Transcodes that bill charges **RETURN to Review Account Instructions**

**Tuition transcodes should include:**

- AT%
- BT%
- CT%
- FT%
- DT%
- ET%
- GT%
- HT3%
- HT4%
- KT%
- MT%
- NT%
- PT%
- YT%
- ZTSPxx- Spr Tuition
- MCSSxx- Special Student Fee
- MCVSxx- Visiting Student Fee
- MFINTL- Int'l Student Fee



## Payments to Review

## RETURN to Review Account Instructions

AAZPxx- UniCredit Loan AAZxxx- Outside Fellowship ALFP16- Stafford Subsidized ALFP16- Stafford UnSubsidized ALFP20- DLGPLUS ALFP20- Perkins ALFP20- Stafford UnSubsidized ALIPxx- Class of 84 Crowell ALIPxx- McGillian Loan ALIPxx- SAISLOAN APACPW- E-Check PW Pymt APACPW- E-Check PW Pymt APAMPW- Amex PW Pymt APCAxx- Payment Cash APCCPW- V/MC PW Pymt APCHxx- Payment Check APDAxx- Admission Fee Defer APDAxx- Admission Fee Defer APDCPW- DSCVR PW Pymt APEDxx- Payment Matric Fee APTMS- Spring TMS Payment BPCUEx- Uncredit euro cash BPCUEx- Uncredit euro cash BPHUDx- Uncredit dollar chk BPHUDx- Uncredit dollar chk BPWME- BPM euro wire	DLFP19- FedDLPLUS DLFP19- Stafford Subsidized DLFP19- Stafford UnSubsidized DLFP20- FedDLPLUS DLFP20- Perkins DLFP20- Stafford GPLUS DLFP20- Stafford Subsidized DLFP20- Stafford UnSubsidized DLIPxx- Foundation Loan DPACPW- E-Check PW Pymt DPAMPW- Amex PW Pymt DPCCPW- V/MC PW Pymt DPCHxx- Check Payment DPCSPx-Coll Svgs Plan Pymt DPDCPW- DSCVR PW Pymt DPEDxx- Enrollment Deposit DPEDxx- Enrollment Deposit DPLE15- ELM Loan by EFT(BK 15) DPTMFL- Fall TMS Payment DPTMSP- Spring TMS Payment DPTMSU-Sum TMS Payment ELFP20- FedDLPLUS ELFP20- Perkins ELFP20- Stafford GPLUS ELFP20- Stafford Subsidized ELFP20- Stafford UnSubsidized EPACPW- E-Check PW Pymt EPAMPW- Amex PW Pymt	EPCCSPx-Coll Svgs Plan Pymt EPCCSPx-Coll Svgs Plan Pymt EPCTFx- Trust Fund Payment EPCTFx- Trust Fund Payment EPDPCW- DSCVR PW Pymt EPLE15- ELM Loan by EFT(BK 15) EPSLxx- Loan Payment EPTMFL- Fall TMS Payment EPTMSP- Spring TMS Payment EPTMSU-Sum TMS Payment HLFP20- Direct GPLUS HLFP20- Direct Sub HLFP20- Direct Unsub HLFP20- HealUnsub HLFP20- Perkins HLlxx- ASTAL HLlxxx- USX HPACPW- E-Check PW Pymt HPAMPW- Amex PW Pymt HPCCPW- V/MC PW Pymt HPCHxx- Check Payment HPDCPW- DSCVR PW Pymt HPED19- Enrollment Deposit (bk 19) HPED19- Enrollment Deposit (bk 19) HPOCxx- Outside Check HPOCxx- Outside Check HPOLxx- Outside Loan Pmt HPSE03- ACH (M+T Bk 3)	KLFP20- DLGPLUS KLFP20- DLPLUS KLFP20- DLSub KLFP20- DLUnsub KLFP20- DLUnsub 2 KLFP20- Perkins KLFPxx- NSL KLFPxx- Nurse Faculty Loan KLPPxx- CmLineAltLoan KLPPxx- SlackLn KPACPW- E-Check PW Pymt KPAMPW- Amex PW Pymt KPCCPW- V/MC PW Pymt KPCHxx- Check Payment KPDCPW- DSCVR PW Pymt KPDEPx- Deferred Deposit KPDEPx- Deferred Deposit KPDEPx- Deferred Deposit KPJHCU- JH Credit Union KPOLxx- Outside Loan Pmt LLFP20- FedDLGPLUS LLFP20- FedDLPLUS LLFP20- FedDLSub LLFP20- FedDLUnSub LLFP20- FedPerk LLIPxx- JHUHackLoan LLPPxx- AltLoanElm LLPPxx- AltLoanElm LLPxx- AltLoanElm	LPCAxx- Cash Payment LPCCPW- V/MC PW Pymt LPDCPW- DSCVR PW Pymt LPI529- Indep. 529 Credit LPTMSP- Spring TMS Payment LPW4xx- Wire Pmt (bk 4) LPWTxx- Wire Transfer Pymt MLFP19- Perkins MLFP20- Stafd GPLUS MLFP20- Stafd Unsub MLFP20- Stafd Unsub Addl MLFPxx- PCL MLIPxx- AlumMedLnFnd MLIPxx- AmMedAssocLnFnd MLIPxx- Amoss Loan Fund MLIPxx- BoswellLnFnd MLIPxx- CL1932LnFnd MLIPxx- C11934LnFnd MLIPxx- C11935LnFnd MLIPxx- C11949LnFnd MLIPxx- C11952LnFnd MLIPxx- C11959LnFnd MLIPxx- DanielsLnFnd MLIPxx- DelamarLnFnd MLIPxx- EdwardsLnFnd MLIPxx- FilbertLnFnd MLIPxx- FriorLnFnd MLIPxx- HunterLnFnd MLIPxx- JohnsonLnFnd MLIPxx- KelloggLnFnd	MLIPxx- KonttasLnFnd MLIPxx- Maen-DavLnFnd MLIPxx- MaxwellLnFnd MLIPxx- McKinstyLnFnd MLIPxx- MedRevolLnFnd MLIPxx- MedStuLnFnd MLIPxx- MerckLnFnd MLIPxx- MonroeLnFnd MLIPxx- NortonLnFnd MLIPxx- RelocLnFnd MLIPxx- SchwartzLnFnd MLIPxx- SOMLoan MLIPxx- SurdnaLnFnd MLIPxx- SurgeryLnFnd MLIPxx- WangLnFnd MLIPxx- WessonLnFnd MLIPxx- WhartonLnFnd MPACPW- E-Check PW Pymt MPAMPW- Amex PW Pymt MPCASH- Cash MPCCPW- V/MC PW Pymt MPCHKx- Check MPDCPW- DSCVR PW Pymt MPESDN- Dntl Ins Pymt-Escrow MPESH- Hlth Ins Pymt-Escrow MPESTU- Tuition Pymt-Escrow MPESTU- Tuition Pymt-Escrow MPESUH- UHS Fee Pmt-Escrow NPAMPW- Amex PW Pymt	NPCCxx- Outside Check NPW4xx- Wire (Bk 4) SPA4xx- ACH Pymt (Bk 4) SPA529- ACH Pymt(Bk 4) SPAMPW- Amex PW Pymt SPC529- 529 Check Pymt SPC529- 529 Check Pymt SPCAxx- Cash Payment SPCCPW- V/MC PW Pymt SPCHxx- Check Payment SPCK03- Check (M+T Bk 3) SPCK03- Check (M+T Bk 3) SPCTFx- Trust Fund Payment SPCTFx- Trust Fund Payment SPFCxx- Foreign Check Pymt SPI529- Indep. 529 Credit SPI529- Indep. 529 Credit SPW3xx- Wire (M+T Bk 3) SPW3xx- Wire (M+T Bk2) SPW4LP- Wire Loan Pmt (bk 4) SPW4WU- WestUnion Wire SPW4WU- WestUnion Wire SPW4xx- Wire Pmt (bk 4) YLFP20- DLGPLUS YLFP20- DLPLUS YLFP20- DLSub YLFP20- DLUnsub YLFP20- Perkins YLIPxx- PLITT YLIPxx- PLITTStudent YLZPxx- Peabody NON-DISB LOAN
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BPWMEEx- BPM euro wire BPWUDx- Unicredit dollar wire BPWUDx- Unicredit dollar wire BPWUEEx- Unicredit euro wire BPWUEEx- Unicredit euro wire	EPCAxx- Cash Payment EPCCPW- V/MC PW Pymt EPCHxx- Check Payment	HPSE03- ACH (M+T Bk 3) HPSE15- ACH (BOA Bk 15) HPSE15- ACH (BOA Bk 15)	LPACPW- E-Check PW Pymt LPAMPW- Amex PW Pymt	MLIPxx- KnealeLnFnd	NPCCPW- V/MC PW Pymt NPDCPW- DSCVR PW Pymt	YPACPW- E-Check PW Pymt YPAMPW- Amex PW Pymt YPC529- 529 Check Pymt  YPC529- 529 Check Pymt YPCAxx- Payment Cash YPCCPW- V/MC PW Pymt YPCHEX- Payment Check YPCDPW- DSCVR PW Pymt YPTMSP- Spring TMS Payment
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Refunds to Review

Refund Transcodes **RETURN to Review Account Instructions**

**Below are the e-check and card payment transcodes that also appear as a positive (debit) value when a refund is posted back to that method:**

APACPW- E-Check PW Pymt	DPAMPW- Amex PW Pymt	EPDCPW- DSCVR PW Pymt	KPAMPW- Amex PW Pymt	LPDCPW- DSCVR PW Pymt	NPCCPW- V/MC PW Pymt	YPCCPW- V/MC PW Pymt
APACPW- E-Check PW Pymt	DPCCPW- V/MC PW Pymt	HPACPW- E-Check PW Pymt	KPCCPW- V/MC PW Pymt	MPACPW- E-Check PW Pymt	NPDCPW- DSCVR PW Pymt	YPCDPW- DSCVR PW Pymt
APAMPW- Amex PW Pymt	DPDCPW- DSCVR PW Pymt	HPAMPW- Amex PW Pymt	KPDCPW- DSCVR PW Pymt	MPAMPW- Amex PW Pymt	SPAMPW- Amex PW Pymt	
APCCPW- V/MC PW Pymt	EPACPW- E-Check PW Pymt	HPCCPW- V/MC PW Pymt	LPACPW- E-Check PW Pymt	MPCCPW- V/MC PW Pymt	SPCCPW- V/MC PW Pymt	
APDCPW- DSCVR PW Pymt	EPAMPW- Amex PW Pymt	HPDCPW- DSCVR PW Pymt	LPAMPW- Amex PW Pymt	MPDCPW- DSCVR PW Pymt	YPACPW- E-Check PW Pymt	
DPACPW- E-Check PW Pymt	EPCCPW- V/MC PW Pymt	KPACPW- E-Check PW Pymt	LPCCPW- V/MC PW Pymt	NPAMPW- Amex PW Pymt	YPAMPW- Amex PW Pymt	

**Below are the student refund transcodes:**

APCLRF- Cancel Refund Payment	KPCLRF- Cancel Refund Payment
APERFx – Electronic Refund	KPXFERF – Cancel Electronic Refund
APRFxx- Refund	LPCLRF- Cancel Refund Payment
APXFERF – Cancel Electronic Refund	LPERFx – Electronic Refund
BCRUDx- Unicredit Dollar Refund	LPRFx- Refund
BCRUEEx- Unicredit Euro Refund	LPXFERF – Cancel Electronic Refund
DPCLRF- Cancel Refund Payment	LXSP20- Special 2020 Refund - Misc
DPERFx- Electronic Refund	MPCLRF- Cancel Refund
DPRFx- Refund	MPERFx – Electronic Refund
DPXFERF- Cancel Electronic Refund	MPRFxx- Refund



EPCLRF- Cancel Refund Payment	MPXERF – Cancel Electronic Refund
EPERFx- Electronic Refund	SPCLRF- Cancel Refund
EPRADJ- REFUND ADJUSTMENT	YPCLRF- Cancel Refund
EPRFxx- Refund	YPERFx – Electronic Refund
EPxERF- Cancel Electronic Refund	YPRFxx- Refund
HPCLRF- Cancel Refund Payment	YPXERF – Cancel Electronic Refund
HPERFx – Electronic Refund	ZCRFxx- Refund
HPRFxx- Refund	ZPWCRF- Cancel Refund
HPXERF – Cancel Electronic Refund	KPCLRF- Cancel Refund Payment

For questions or assistance, please contact:	
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**FRANCIS MAILMAN SOUMILAS, P.C.** (FMS) is a law firm that concentrates in consumer protection litigation. While principally based in center-city Philadelphia, the firm also maintains offices in New York, Chicago, and San Francisco. FMS represents consumers in both individual and class actions. Founded in 1998 as Francis & Mailman, P.C., the firm’s goal is to provide exceptional advocacy to consumers subjected to unfair business, industry, and trade practices.

FMS is one of the nation’s preeminent consumer protection litigation firms. The firm has obtained numerous ground-breaking legal decisions, record jury verdicts and large consumer settlements. In 2017, FMS obtained a record \$60 million dollar class action verdict for a case tried under the Fair Credit Reporting Act. The case ultimately went to the United States Supreme Court, which resulted in a 5-4 remand decision that has become a landmark case in civil litigation concerning the issue of constitutional standing. The firm has been certified to serve as class counsel in over 70 consumer class actions nationwide.

Due to its litigation proficiency, expertise and the high caliber of its work-product, FMS has been repeatedly recognized and commended by federal courts throughout the country over many years. *Barel v. Bank of America*, 255 F.R.D. 393, 398-99 (E.D. Pa. 2009) (finding firm “competent, experienced and well-qualified to prosecute class actions” and noting that class counsel “have done an excellent job in representing the class in the instant litigation.”); *Martinez v. Avantus, LLC*, 343 F.R.D. 254 2023 WL 112807, \*9 (D. Conn. Jan. 5, 2023)(firm “has substantial experience in class action litigation, including FCRA class actions....[and] demonstrated proficiency at all stages of suit”); *Ramirez v. Trans Union, LLC*, 2022 WL 1772395 (N.D. Cal. Dec. 15, 2022)(“Courts have consistently recognized Francis Mailman Soumilas ‘for its expertise in FCRA litigation and the high caliber of its work for the classes it represents.’”); *Der Hacopian v. SentryLink*, C.A. 18-3001 (D. Md., Nov. 23, 2020)(firm “many, many times in the past has been found to be not just qualified or competent, but extremely well-qualified and competent to represent consumer classes in many, many other jurisdictions, not only this particular jurisdiction”); *Flores v. Express Services, Inc.*, C.A. No.14-3298, 2017 WL 1177098, at \*3 (E.D. Pa. March 30, 2017) (firm “has extensive experience in consumer class action litigation); *White v. Equifax Info. Solutions*, No. 05-01070, 2014 WL 1716154, at \*13, 19, 22 (C.D. Cal. May 1, 2014), *aff’d sub nom. Radcliffe v. Equifax Info. Sol’ns., Inc.*, 818 F.3d 537, 548 (9th Cir. 2016) (appointing firm and its team as interim class counsel over objections from a competing national law firm (Boies Schiller) because firm’s team’s “credentials and experience [we]re significantly stronger in class action and FCRA litigation.”); *Patel v. Trans Union, LLC*, 308 F.R.D. 292, 307 (N.D. Cal. 2015) (FMS “have represented consumer classes in many cases in many districts . . . [and] have shown their proficiency in this case[.]”); *Kelly v. Business Information Group*, C.A. 15-6668, 2019 WL 414915 (E.D. Pa. 2019) (firm “qualified and experienced attorneys” . . . Francis & Mailman, P.C., of Philadelphia...who have substantial experience in class action and FCRA consumer litigation and who are qualified to conduct the litigation.”); *Larson v. Trans Union, LLC*, C.A. 12-cv-05726, 2015 WL 3945052, at \*12 (N.D. Cal. June 26, 2015) (appointing firm as class counsel on contested motion).

## **JAMES A. FRANCIS**

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JIM FRANCIS co-founded FMS in 1998 with the goal of creating a law firm dedicated exclusively to consumer rights litigation. Since then, he and the firm have consistently achieved ground-breaking results and cutting-edge legal rulings. He was trial and appellate counsel in *Ramirez v. Trans Union, LLC*, a case that obtained a record \$60 million dollar verdict for a case brought under the Fair Credit Reporting Act. In 2009, Jim argued the seminal FCRA case of *Cortez v. Trans Union, LLC* before the Third Circuit Court of Appeals. He has been appointed to serve as class counsel by federal courts all over the country in over 70 cases.

In 2004, Jim was the youngest lawyer to be ranked a Top 100 Super Lawyer in Pennsylvania in *Philadelphia Magazine* and *Pennsylvania Super Lawyers* magazine. He has been ranked a Top 100 Superlawyer for Pennsylvania and Philadelphia many times since, including in 2024. In 2014, Jim was selected as one of a small group of national plaintiffs' lawyers to be profiled in Law 360's *Titans of the Plaintiff's Bar* series. In the same year, he was awarded the *Equal Justice Award* by Community Legal Services of Philadelphia.

In 2023, Jim was elected as a Fellow of the American College of Consumer Financial Services Lawyers.

Jim regularly lectures for continuing legal education programs, law schools and community groups throughout the country, and has been a regular speaker for the National Association of Consumer Advocates (NACA) and National Consumer Law Center (NCLC) for over 20 years. He has appeared on various news programs including the *Today Show* and *PBS NewsHour* to discuss consumer-related issues. He was featured in *The Philadelphia Inquirer's* biographical "Question & Answer" segment in February of 2009.

Prior to forming FMS and after graduating from law school, Jim was an associate with Kolsby, Gordon, Robin, Shore & Rothweiler in Philadelphia.

### **EDUCATION**

Temple University Beasley School of Law, J.D. 1995, President-Student Bar Association, 1995 Wapner, Newman & Wigrizer, P.C. award for excellence in civil trial advocacy; award for outstanding Oral Advocacy;

Muhlenberg College, B.A., *cum laude*, 1992

### **ADMISSIONS**

- Pennsylvania and New Jersey state courts
- United States Courts of Appeal for the First, Second, Third, Fourth, Sixth, Seventh, Ninth and Eleventh Circuits
- United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, District of New Jersey, Eastern District of Michigan, Northern District of Oklahoma

- United States Supreme Court

### **HONORS/AWARD/DISTINCTIONS**

- Top 100 Superlawyer for Pennsylvania-2004, 2005, 2007, 2008, 2012, 2014, 2015, 2021, 2022, 2023, 2024
- Top 100 Superlawyer for Philadelphia-2006, 2007, 2008, 2011, 2012, 2014, 2015, 2016, 2018, 2019, 2021, 2022, 2023, 2024
- Law 360's *Titan of the Plaintiff's Bar*-2014
- *Equal Justice Award* by Community Legal Services of Philadelphia-2014
- Elected as a Fellow into the American College of Consumer Financial Services—April 29<sup>th</sup>, 2023
- Selected as a Member of the Nation's Top One Percent by The National Association of Distinguished Counsel

### **NOTABLE CASES**

- *Teran v. Navient Solutions, LLC et al.*, \_\_ B.R. \_\_, 2023 WL 2721904 (Bankr. N.D. Cal. Mar. 30, 2023). Appointed Class Counsel to represent national injunctive relief class.
- *Ramirez v. Trans Union, LLC*, 951 F.3d 1008 (9th Cir. 2020), 141 S.Ct. 2190 (2021); 2022 WL 17740302 (N.D. Cal. Dec. 22, 2022); . Served as trial and appellate counsel in record \$60 million jury verdict for a case brought under the Fair Credit Reporting Act; argued appeal against former Solicitor General of the United States affirming verdict (with remittitur), upon certiorari, remanded by US Supreme; later settled for \$9 million
- *Robinson v. National Student Clearinghouse*, No. 1-19-cv-10749, 2020 WL 4873728 (D. Mass. July 8, 2020) *aff'd* 14 F.4th 56 (1st Cir. 2021). In first challenging the defendant as a consumer reporting agency, obtained \$2 million dollar settlement for consumers who were overcharged for college verifications and brought company into FCRA compliance.
- *Patel v. Trans Union, LLC*, 2018 WL 1258194 (N.D. Cal. March 11, 2018). Served as lead Class Counsel in case which obtained an \$8 million dollar settlement for class of consumers who were falsely being reported as terrorists.
- *Thomas v. Equifax Info. Services, LLC*, No. 18-cv-684 (E.D. Va.). National Class Counsel in FCRA class action, alleging violations by credit bureau for misreporting public records, providing nationwide resolution of class action claims asserted across multiple jurisdictions, including injunctive relief, and an uncapped mediation program for millions of consumers.
- *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va.). National Class Counsel in FCRA class action, alleging violations by credit bureau for misreporting public records, providing a nationwide resolution of class action claims asserted by 32 plaintiffs in 16 jurisdictions, including injunctive relief and an uncapped mediation program, for millions of consumers.
- *Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.). National Class Counsel in FCRA consolidated class action, alleging violations by credit bureau for misreporting public records, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers.

- *In Re: TRS Recovery Services, Inc. and Telecheck Services, Inc.*, Fair Debt Collection Practices Act (FDCPA Litigation)- Served as Class Counsel in a national FDCPA class action and obtained a 3.4-million-dollar settlement against one of the nation's largest check history consumer reporting agencies.
- *Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 3:11-cv-754, 2014 WL 4403524, at \*11 (E.D. Va. Sept. 5, 2014) -- Appointed class counsel in national FCRA class action that obtained a \$13.5-million-dollar settlement against Lexis/Nexis, one of the largest information providers in the world, along with a groundbreaking injunctive relief settlement on behalf of 200 million Americans in which LexisNexis agreed to bring its Accurant product into FCRA compliance.
- *Thomas v. BackgroundChecks.com*, C.A. No. 13-029 (E.D. Va. Aug. 11, 2015) –Appointed class counsel in an FCRA national class action which obtained \$18 million against another of the largest background screening companies in the world, and also obtained significant injunctive and remedial relief.
- *Henderson v. Axiom Risk Mitigation, Inc.*, C.A. No. 12-589 (E.D. Va., Aug. 7, 2015)- Appointed class counsel in a national FCRA class action which obtained a \$20.8 million settlement against one of the largest data sellers and background screening companies in the world.
- *Ryals et al. v. Hireright Solutions, Inc.*, C.A. No. 3:09cv625 (E.D. Va. Dec. 22, 2011) – \$28.3 million national settlement achieved for class of consumers subjected to employment background checks in case brought under Fair Credit Reporting Act (FCRA); believed to be the third largest FCRA settlement in history.
- *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d. Cir. 2010) – argued precedential case of first impression before the U.S. Court of Appeals for the Third Circuit which outlines the liability, causation and damages standards for FCRA cases against credit reporting agencies; \$800,000 jury verdict against Trans Union in fair credit reporting case (remitted to \$150,000).
- *Little v. Kia Motors America, Inc.*, 2003 WL 25568765 (N.J. Super. L. 2003) – \$6 million (approximate) verdict for class of New Jersey car purchasers.
- *Samuel-Bassett v. Kia Motors America, Inc.*, \_\_\_ A.3d \_\_\_, 2011 WL 60559098 (Pa. 2011), C.P. Phila. County, January Term, 2001, No. 2199 – \$5.6 million verdict for class of Pennsylvania car purchasers, plus award of attorney’s fees.
- *Serrano v. Sterling Testing Systems, Inc.*, \_\_\_ F. Supp. 2d \_\_\_, 2008 WL 2223007 (E.D. Pa. May 30, 2008) – federal court finding as a matter of first impression what defines a record of arrest under the FCRA.
- *Ziegenfuse v. Apex Asset Management, LLC*, 239 F.R.D. 400 (E.D. Pa. 2006) – obtained court decision holding that offers of judgment under Rule 68 of the Federal Rules of Civil Procedure cannot be used in class actions.
- *Stoner v. CBA Information Services*, 352 F. Supp. 2d 549 (E.D. Pa. 2005) – obtained \$772,500 settlement for class of consumers who disputed errors in their credit reports.

- *Richburg v. Palisades Collection, LLC*, 247 F.R.D. 457 (E.D. Pa. 2008); federal court ruled that actions to collect delinquent credit card debt in Pennsylvania subject to 4 year statute of limitations (not 6 as the defendant collection agency had argued).
- *Perry v. FleetBoston Financial Corp.*, 2004 WL 1508518 (E.D. Pa. 2004) – defeated motion to compel arbitration in class action brought under Fair Credit Reporting Act.
- *Crane v. Trans Union, LLC*, 282 F. Supp. 2d 311 (E.D. Pa. 2003) – federal court held that credit reporting agencies that merely parrot information from credit furnishers and fail to forward dispute documentation face claims for punitive damages under the Fair Credit Reporting Act; violation of the Fair Credit Reporting Act presents a violation of Pennsylvania’s Consumer Protection Law).
- *Lawrence v. Trans Union, LLC*, 296 F. Supp. 2d 582 (E.D. Pa. 2003) (same).
- *Wisneski v. Nationwide Collections, Inc.*, 227 F.R.D. 259 (E.D. Pa. 2004) – obtained class certification in Fair Debt Collection Practices action in which a Pennsylvania federal court held for the first time that statutory net worth limitation is not limited to balance sheet net worth, and includes equity, capital stock and goodwill.
- *Evantash v. G.E. Capital Mortgage Services, Inc.*, 2003 WL 22844198 (E.D. Pa. 2003) – federal court held that technical accuracy defense was not available to defendants under the Fair Credit Reporting Act.
- *Sheffer v. Experian Information Solutions, Inc.*, 2003 WL 21710573 (E.D. Pa. 2003) – federal court held that Fair Credit Reporting Act permits as recoverable damage emotional distress in trying to correct errors in a consumer’s credit file, even where no pecuniary or out-of-pocket losses.
- *Sheffer v. Experian Information Solutions Inc.*, 249 F. Supp. 2d 560 (E.D. Pa. 2003) – federal court held that FCRA provides a private right of action against furnishers of information.
- *Sullivan v. Equifax, Inc. et al.*, 2002 U.S. Dist. LEXIS 7884 (E.D. Pa. 2002) – federal court held that reporting a debt to a credit reporting agency is a communication covered by the Fair Debt Collection Practices Act.
- *Wenrich v. Cole*, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. 2000) – federal court held that FDCPA provides protection for all persons, not just consumers.
- *Jaramillo v. Experian Information Solutions, Inc.*, 155 F. Supp. 2d 356 (E.D. Pa. 2001) – federal court held that single publication rule does not apply to actions brought for violation of the Fair Credit Reporting Act.

### **CLASS COUNSEL CERTIFICATIONS**

*Woodard v. Navient Solutions, LLC et al.*, No. 8:23-cv-00301-RFR (D. Neb. 2024)

*Botts v. The Johns Hopkins University*, No. 1:20-cv-01335-JRR, ECF 96 (D. Md. April 20, 2023)

*Teran v. Navient Solutions, LLC et al.*, No. 20-03075-DM,  
2023 WL 2721904 (Bankr. N.D. Cal. Mar. 30, 2023)

*Martinez v. Avantus, LLC*, No. 3:20-CV-1772 (JCH), 2023 WL 112807 (D. Conn. Jan. 5, 2023)

*Stewart et al v. LexisNexis Risk Data Retrieval Services, LLC et al.*, No. 3:20-cv-00903-JAG (E.D. Va. July 27, 2022)

*Healy v. Milliman, Inc.*, No. 2:20-cv-01473-JCC (W.D. Wash. 2022)

*Kang v. Credit Bureau Connection, Inc.*, No. 18-01359, 2022 WL 658105 (E.D. Cal. Mar. 4, 2022)

*Watson v. Checkr, Inc.*, No. 3:19-cv-03396-EMC (N.D. Cal. 2021)

*Deaton v. Trans Union, LLC*, No. 2:20-cv-01380-AB (E.D. Pa. 2021)

*Sanders v. Makespace Labs, Inc.*, No: 1:18-cv-10016 (S.D.N.Y. Mar. 29, 2021)

*Der-Hacopian v. Darktrace, Inc.*, No: 18-cv-06726-HSG (N.D. Cal. Dec. 10, 2020)

*Der-Hacopian v. Sentrylink, LLC*, No. 8:18-cv-03001-PWG (N.D. Cal. Nov. 23,2020)

*McIntyre v. RealPage, Inc.*, No: 2:18-cv-03934, WL 5017612 (E.D. Pa. Aug. 25, 2020)

*Norman v. Trans Union, LLC*, No: 18-5225, 2020 WL 4735538 (E.D. Pa. Aug. 14, 2020)

*Robinson v. National Student Clearinghouse*, No. 1-19-cv-10749, 2020 WL 4873728 (D. Mass. July 8, 2020) *aff'd* 14 F.4th 56 (1st Cir. 2021)

*Leo v. Appfolio, Inc.*, No.3:17-cv-05771-RJB (W.D. Wash. 2019)

*Thomas v. Equifax Info. Services, LLC*, No. 18-cv-684 (E.D. Va. 2020)

*Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va. 2019)

*Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va. 2018)

*Gibbons v. Weltman, Weinberg & Reis Co., LPA*, 2018 WL 5720749 (E.D. Pa. Oct. 31, 2018)

*Kelly v. Business Information Group*, C.A. 15-6668, 2019 WL 414915 (E.D. Pa. 2019)

*Ridenour v. Multi-Color Corporation*, C.A. No. 2:15-cv-00041, (E.D. Va., Jan. 13, 2017)

*Flores v. Express Personnel*, C.A. No. 14-cv-03298, (E.D. Pa. Oct. 21, 2016)

*Larson v. Trans Union, LLC*, C.A. No. 12-cv-05726, (N.D. CA, Aug. 11, 2016)

*Miller v. Trans Union, LLC*, C.A. No. 12-cv-1715, (M.D. PA, Dec. 26, 2016)

*Henderson v. Trans Union, LLC*, C.A. No. 14-cv-00679, E.D. Va., May 3, 2016)

*Pawlowski v. United Tranzactions, LLC*, C.A. no. 15-cv-2330, (E.D. PA, April 18, 2016)

*Rodriguez v. Calvin Klein, Inc.*, C.A. 1:15-cv-02590 (S.D. N.Y. 2015)

*Giddiens v. Infinity Staffing*, C.A. No. 13-cv-07115, (E.D. Pa., Jan. 12, 2016)

*Giddiens v. First Advantage*, C.A. No. 14-cv-5105, (E.D. Pa., July 11, 2015)

*Jones v. Halstead Management Corporation*, C.A. No. 14-cv-03125 (S.D. N.Y., May 5, 2016)

*Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 3:11-cv-754, 2014 WL 4403524 (E.D. Va. Sept. 5, 2014)

*Thomas v. BackgroundChecks.com*, C.A. No. 13-029 2015 WL 11004870 (E.D. Va. Aug. 5, 2015)

*Henderson v. Acxiom Risk Mitigation, Inc.*, C.A. No. 12-589 (E.D. Va., Aug. 7, 2015)

*Magallon v. Robert Half International, Inc.* WL 8778398 (D. Or. Nov. 10, 2015)

*Carter v. McDonald's Restaurants*, 15-01531-MWF (March 15, 2015)

*Patel v. Trans Union, LLC*, 308 F.R.D. 292 (N.D. Cal. 2014)  
*Goode v. First Advantage LNS Screening Sols., Inc.*, No. 11-cv-02950 (E.D. Pa. Dec. 29, 2014)  
*Blandina v. Midland Funding, LLC*, 2014 WL 7338744 (E.D. Pa. Dec. 23, 2014)  
*King v. General Information Services, Inc.*, C.A. No. 11-06850 (E.D. Pa. Nov. 4, 2014)  
*Robinson v. General Information Services, Inc.*, C.A. No. 11-07782 (E.D. Pa. Nov. 4, 2014)  
*Ramirez v. Trans Union, LLC*, 2014 WL 3734525 (N.D. Cal. July 24, 2014)  
*White v. Experian Information Solutions*, 993 F. Supp. 2d 1154, 1172 (C.D. Ca. 2014)  
*Sapp v. Experian Information Solutions, Inc.*, 2:10-04312 (E.D. Pa. Jan. 29, 2013)  
*LaRocque v. TRS Recovery Services, Inc.*, 2012 WL 291191 (D. Me. July 17, 2012)  
*Ryals et al. v. Hireright Solutions, Inc.*, C.A. No. 3:09-625 (E.D. Va. July 7, 2011)  
*Serrano v. Sterling Testing Systems, Inc.*, 711 F. Supp. 2d 402 (E.D. Pa. 2010)  
*Summerfield v. Equifax Information Services, LCC*, 264 F.R.D. 133 (D. N.J. 2009)  
*Chakejian v. Equifax Information Services, LLC*, 256 F.R.D. 492 (E.D. Pa. 2009)  
*Jones v. Midland Funding, LLC*, C.A. No. 3:08-802 (RNC) (D. Conn. October 13, 2009)  
*Barel v. Bank of America*, 255 F.R.D. 393 (E.D. Pa. 2009)  
*Mann v. Verizon*, C.A. No. 06-5370 (E.D. Pa. Sept. 26, 2008)  
*Smith v. Grayling Corp.*, 2008 WL 3861286, C.A. No. 07-1905 (E.D. Pa. 2008)  
*Strausser v. ACB Receivables Management, Inc.*, 2008 WL 859224 (E.D. Pa. March 28, 2008)  
*Nienaber v. Citibank (South Dakota), N.A.*, 2007 WL 2003761 (D.S.D. July 5, 2007)  
*Jordan v. Commonwealth Financial Systems, Inc.*, 237 F.R.D. 132, (E.D. Pa. 2006)  
*Marino v. UDR*, 2006 WL 1687026, C.A. No. 05-2268 (E.D. Pa. June 14, 2006)  
*Seawell v. Universal Fidelity Corp*, 235 F.R.D. 64 (E.D. Pa. 2006)  
*Perry v. FleetBoston Financial Corp.*, 229 F.R.D.105 (E.D. Pa. 2005)  
*Beck v. Maximus, Inc.*, 2005 WL 589749 (E.D. Pa. 2005)  
*Beck v. Maximus*, 457 F. 3d 291, 2006 WL 2193603 (3d Cir. Aug. 4, 2006)  
*Stoner v. CBA Information Services*, 352 F. Supp. 2d 549 (E.D. Pa. 2005)  
*Bittner v. Trans Union, LLC*, C.A. No. 04-2562 (E.D. Pa. January 4, 2005)  
*Wisneski v. Nationwide Collections, Inc.*, 227 F.R.D. 259 (E.D. Pa. 2004)  
*Petrolito v. Arrow Financial Services, LLC*, 221 F.R.D. 303 (D. Conn. 2004)  
*Orloff v. Syndicated Office Systems, Inc.*, 2004 WL 870691 (E.D. Pa 2004)  
*Bonett v. Education Debt Services, Inc.*, 2003 WL 21658267 (E.D. Pa. 2003)  
*Gaumer v. The Bon-Ton Stores*, C.A. No. 02-8611 (E.D. Pa. Dec. 30, 2003)  
*Street v. Portfolio Recovery Associates*, C.A. No. 01-3684 (E.D. Pa. July 30, 2003)  
*Samuel-Bassett v. Kia Motors America, Inc.*, 212 F.R.D. 271 (E.D. Pa. 2000)  
*Oslan v. Law Offices of Mitchell N. Kay*, 232 F. Supp. 2d 436 (E.D. Pa. 2002)  
*Oslan v. Collection Bureau of Hudson Valley*, 206 F.R.D. 109 (E.D. Pa. 2002)

*Saunders v. Berks Credit & Collections*, 2002 WL 1497374 (E.D. Pa. 2002)  
*Schilling v. Let's Talk Cellular and Wireless*, 2002 U.S. Dist. LEXIS 3352 (E.D. Pa. 2002)  
*Fry v. Hayt, Hayt and Landau*, 198 F.R.D. 461 (E.D. Pa. 2000)  
*Smith v. First Union Mortgage Corporation*, 1999 WL 509967 (E.D. Pa. 1999)  
*Miller v. Inovision*, December Term, 1999, No. 3504 (C.P. Phila. County).

### **LECTURES/PRESENTATIONS BY INVITATION**

Speaker, *Rule 23(c)(5) Subclasses: Certification, Due Process, Adequate Representation, and Settlement*, Strafford Webinars, February 23, 2023

Speaker, *Data Protection at the Federal Level*, Nevada Bar Association, January 17, 2023

Speaker, *27th Annual Consumer Financial Services Institute*, Practising Law Institute, *Debt Collection and Credit Reporting Update*, December 7, 2022, San Francisco, CA

Speaker, *Tenant Screening Litigation: FCRA and Civil Rights Claims*, National Consumer Law Center, Consumer Rights Litigation Conference, November 10, 2022, Seattle, WA

Speaker "Lightning Round-Ascertainability", Consumer Class Action Symposium, National Consumer Law Center, November 13, 2022, Seattle, WA

Speaker, *27th Annual Consumer Financial Services Institute*, Practising Law Institute, *Debt Collection and Credit Reporting Update*, September 20, 2022, Chicago, IL

Speaker, *Representing the Pro Bono Client: Consumer Law Basics*, Practising Law Institute, August 12, 2022

Speaker, *Perrin Conferences Class Action Litigation Virtual Conference*, April 26, 2022

Speaker, Introduction to Standing in Federal FDCPA Litigation, 2022 Fair Debt Conference, National Consumer Law Center, April 25<sup>th</sup>, 2022, Orlando, FL

Speaker, *27th Annual Consumer Financial Services Institute- Debt Collection and Credit Reporting Update*, Practising Law Institute, March 18, 2022, New York, NY

Speaker, *Consumer Finance Class Actions: FDCPA, FCRA & TCPA Webinar*, Strafford, September 16, 2020

Faculty, *Introduction to the Fair Credit Reporting Act, Representing the Pro Bono Client: Consumer Law Basics 2020*, Practising Law Institute, August 14, 2020, San Francisco, CA

Faculty, *Representing the Pro Bono Client: Consumer Law Basics 2019*, Practising Law Institute;

Faculty, *Consumer Financial Services & Banking Law Update*, Pennsylvania Bar Institute, October 29, 2019;

Faculty, *Consumer Finance Class Actions*, The Canadian Institute, July 24, 2019;

Faculty, *Representing the Pro Bono Client: Consumer Law Basics 2019*, Practising Law Institute;

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Long Beach, CA, May 1-4, 2019;



Faculty, *Judicial Scrutiny of Class Action Settlements: New Standards and Ensuring Timely Release of Attorneys' Fees*, Strafford Webinars and Publications, Tuesday, October 9, 2018;

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Baltimore, MD, April 22-29, 2017;

Faculty, 21st Annual Consumer Financial Services Litigation Institute (CLE-accredited), "Fair Credit Reporting and Debt Collection Litigation", March and April 2016, NYC and Chicago;

Speaker, The Conference on Consumer Finance Law, Annual Consumer Financial Services Conference, Loyola University School of Law, Chicago, Illinois, September 16, 2016;

Speaker, "New Frontiers: FCRA Litigation Against Lesser Known CRAs", Consumer Rights Litigation Conference, National Consumer Law Center, Anaheim, California, October 2016;

Faculty, "Pursuing and Defending FDCPA, FCRA and TCPA Claims", Consumer Finance Class Actions, Strafford Publications, June 2, 2016;

Speaker, "Stump the Champs", Consumer Rights Litigation Conference, National Consumer Law Center, San Antonio, Texas, October 2015;

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Las Vegas, NV May 1-3, 2015;

Co-Chair and Speaker, NACA 2013 FCRA Conference, National Association of Consumer Advocates, May 29 – June 1, 2013;

Presenter, *Beyond E-Oscar: Litigating "Non-Credit" FCRA Cases*, Webinar, National Association of Consumer Advocates, February 27, 2013;

Faculty, *FDCPA Class Actions: Latest Litigation Developments*, Strafford Webinars and Publications, November 8, 2012;

Speaker, Consumer Finance Class Actions: *FCRA and FACTA: Leveraging New Developments in Certification, Damages and Preemption*, Strafford Webinars and Publications, March 21, 2012;

Speaker, *FCRA Developments*, Consumer Rights Litigation Conference, National Consumer Law Center, Seattle, Washington, October 2012;

Speaker, *11<sup>th</sup> Consumer Class Action Symposium*, National Consumer Law Center, Chicago, Illinois, November 6, 2011;

Speaker, *Tenant, Employment and Chexsystems Reports*, Consumer Rights Litigation Conference, National Consumer Law Center, Chicago, Illinois, November 3 – 6, 2011;

Speaker, *Specialty Consumer Reports and the FCRA*, FCRA Conference on Consumer Credit, National Association of Consumer Advocates, Memphis, Tennessee, May 20 – 22, 2011;

Panelist, *Taking on the Challenges Facing Workers with Criminal Records: Advancing the Legal and Policy Advocacy Agenda*, National Employment Law Project, Washington, D.C., April 5, 2011;

Faculty, 16<sup>th</sup> Annual Consumer Financial Services Litigation Institute (CLE-accredited), *Collection Issues Including The TCPA & Hot Topics*, Practising Law Institute, New York, NY and Chicago, IL, March 2011;

Speaker, *ABCs of Fair Credit Reporting, Tips on FCRA Depositions, Evolution of Credit Reporting Industries*, Consumer Rights Litigation Conference, National Consumer Law Center, Boston, Massachusetts, November 11 – 14, 2010;

Faculty, Banking and Consumer Financial Services Law Update, *Litigation and Arbitration Update*, Pennsylvania Bar Institute, April 14, 2010;

Faculty, *Deposit-Side Litigation Developments & Credit Card Developments*, 14<sup>th</sup> Annual Consumer Financial Services Litigation Institute, New York, NY and Chicago, IL, March and April 2009;

Faculty, 13<sup>th</sup> Annual Consumer Financial Services Litigation Institute (CLE-accredited), Practicing Law Institute, New York, NY and Chicago, IL, January 2008, March 2008;

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Chicago, IL May 8 – 10, 2009;

Faculty, 12<sup>th</sup> Annual Consumer Financial Services Litigation Institute (CLE-accredited), Practicing Law Institute, New York, NY, March 2007;

Faculty, *Fair Credit Reporting Litigation*, Consumer Protection Law (CLE-accredited), Pennsylvania Bar Institute, Philadelphia, PA and Mechanicsburg, PA, December 2004, March 2007;

Speaker, *Litigating Accuracy Issues with Furnishers of Credit Data*, National Association of Consumer Advocates, New Orleans, LA, June 2 – 5, 2005;

Speaker, Philadelphia Housing Expo, Homeownership Counseling Association of the Delaware Valley, 2005 and 2006;

Speaker, *Understanding Credit Scoring*, Consumer Rights Litigation Conference, National Consumer Law Center, Boston, MA, November 7, 2004;

Speaker, *Litigating Accuracy Issues With Credit Reporting Agencies*, National Association of Consumer Advocates, Chicago, Ill., May 14 – 16, 2004;

Speaker, *Protecting Privacy, Ensuring Accuracy*, National Association of Consumer Advocates, Albuquerque, NM, June 1, 2002;

Faculty/Speaker, *Credit Reporting and Debt Collection Litigation*, Municipal Court Judicial Conference (CLE), Pennsylvania, PA, May 6, 1999;

Speaker, The People's Law School, Philadelphia Bar Association, Philadelphia, PA, October 2004;

Guest Lecturer, Consumer Protection Law, Temple Law School, 2003 – 2012;

Guest Lecturer, Consumer Protection Law, Widener Law School, 2004 – 2009.

## **PUBLICATIONS**

*The FCRA: A Double-Edged Sword for Consumer Data Sellers*,  
GP SOLO Magazine, American Bar Association, Volume 29, Number 6,  
November/December 2012

*Credit Rating Damage: Compensable, Yet Overlooked Damage in Tort Cases*,

The Verdict, Philadelphia Trial Lawyers Association, Volume 2008-2009, Issue 6 (2009).

### **APPOINTMENTS, POSITIONS & MEMBERSHIPS**

- Editorial Board of the Consumer Financial Services Law Report
- Philadelphia Bar Association's Lawyer Referral and Information Service Committee (chair or co-chair for 3 years)
- Philadelphia Bar Association's Federal Court's Committee.
- Arbitrator for the Court of Common Pleas of Philadelphia County
- Court of Common Pleas of Philadelphia County, Judge Pro Tem panel.

### **PERSONAL**

Born: June 17, 1970, Philadelphia, Pennsylvania  
Family: Two Children, Shayna and Noah

### **MARK D. MAILMAN**

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MARK D. MAILMAN, is the managing partner of FMS and one of the firm's founders. He is a tenacious and passionate consumer litigator who has for more than 26 years helped secure over \$350 million dollars in verdicts and settlements on behalf of more than 8,500 victimized consumers across the nation. Mark concentrates his practice primarily in federal courts, in the areas of Fair Debt Collection, Fair Credit Reporting, False Employment/Background Checks, Identity Theft, Unwanted Auto Calls and Texts, and Consumer Class Actions.

In October 2018, Mark was awarded the 2018 Consumer Attorney of the Year award from the National Association of Consumer Advocates (NACA). NACA is a nationwide organization of more than 1,500 consumer attorneys and advocates who represent the victims of abusive and fraudulent business practices. He has been consistently voted and named one of Pennsylvania's Super Lawyers by Law and Politics published by Philadelphia Magazine and Pennsylvania Super Lawyer Magazine from 2004 to the Present. Mark has repeatedly lectured before judges, lawyers and various professional organizations on the topics of Fair Debt Collection and Fair Credit Reporting litigation and has also appeared on various news programs to discuss trending consumer issues

Mark is a graduate of Muhlenberg College (B.A. magna cum laude, 1991), where he was also inducted into Phi Beta Kappa. He received his law degree from the Temple University School of Law (J.D., 1995). While at Temple Law School, he achieved the highest grade in his Trial Advocacy clinic.

Mark is admitted to practice before the United States for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Eastern District of Arkansas, District of North Dakota, and District of New Jersey as well as the state courts of Pennsylvania and New Jersey. He has also successfully litigated cases across the country on a pro hac basis. Mark has been certified to serve as class counsel by state and federal courts in both contested and settlement class actions.

**CLASS COUNSEL CERTIFICATIONS**

*Martinez v. Avantus, LLC*, No. 3:20-CV-1772 (JCH), 2023 WL 112807 (D. Conn. Jan. 5, 2023)  
*Stewart et al v. LexisNexis Risk Data Retrieval Services, LLC et al.*, No. 3:20-cv-00903-JAG (E.D. Va. July 27, 2022)  
*Healy v. Milliman, Inc.*, No. 2:20-cv-01473-JCC (W.D. Wash. 2022)  
*Kang v. Credit Bureau Connection, Inc.*, No. 18-01359, 2022 WL 658105 (E.D. Cal. Mar. 4, 2022)  
*Watson v. Checkr, Inc.*, No. 3:19-cv-03396-EMC (N.D. Cal. 2021)  
*Deaton v. Trans Union, LLC*, No. 2:20-cv-01380-AB (E.D. Pa. 2021)  
*Sanders v. Makespace Labs, Inc.*, No: 1:18-cv-10016 (S.D.N.Y. Mar. 29, 2021)  
*Der-Hacopian v. Darktrace, Inc.*, No: 18-cv-06726-HSG (N.D. Cal. Dec. 10, 2020)  
*Der-Hacopian v. Sentrylink, LLC*, No. 8:18-cv-03001-PWG (N.D. Cal. Nov. 23, 2020)  
*McIntyre v. RealPage, Inc.*, No: 2:18-cv-03934, WL 5017612 (E.D. Pa. Aug. 25, 2020)  
*Norman v. Trans Union, LLC*, No: 18-5225, 2020 WL 4735538 (E.D. Pa. Aug. 14, 2020)  
*Robinson v. National Student Clearinghouse*, No. 1-19-cv-10749, 2020 WL 4873728 (D. Mass. July 8, 2020) *aff'd* 14 F.4th 56 (1st Cir. 2021)  
*Leo v. Appfolio, Inc.*, No.3:17-cv-05771-RJB (W.D. Wash. 2019)  
*Thomas v. Equifax Info. Services, LLC*, No. 18-cv-684 (E.D. Va. 2020)  
*Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va. 2019)  
*Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va. 2018)  
*Gibbons v. Weltman, Weinberg & Reis Co., LPA*, 2018 WL 5720749 (E.D. Pa. Oct. 31, 2018)  
*Kelly v. Business Information Group*, C.A. 15-6668, 2019 WL 414915 (E.D. Pa. 2019)  
*Ridenour v. Multi-Color Corporation*, C.A. No. 2:15-cv-00041, (E.D. Va., Jan. 13, 2017)  
*Flores v. Express Personnel*, C.A. No. 14-cv-03298, (E.D. Pa. Oct. 21, 2016)  
*Larson v. Trans Union, LLC*, C.A. No. 12-cv-05726, (N.D. CA, Aug. 11, 2016)  
*Miller v. Trans Union, LLC*, C.A. No. 12-cv-1715, (M.D. PA, Dec. 26, 2016)  
*Henderson v. Trans Union, LLC*, C.A. No. 14-cv-00679, E.D. Va., May 3, 2016)  
*Pawlowski v. United Tranzactions, LLC*, C.A. no. 15-cv-2330, (E.D. PA, April 18, 2016)  
*Rodriguez v. Calvin Klein, Inc.*, C.A. 1:15-cv-02590 (S.D. N.Y. 2015)  
*Giddiens v. Infinity Staffing*, C.A. No. 13-cv-07115, (E.D. Pa., Jan. 12, 2016)  
*Giddiens v. First Advantage*, C.A. No. 14-cv-5105, (E.D. Pa., July 11, 2015)  
*Jones v. Halstead Management Corporation*, C.A. No. 14-cv-03125 (S.D. N.Y., May 5, 2016)  
*Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 3:11-cv-754, 2014 WL 4403524 (E.D. Va. Sept. 5, 2014)  
*Thomas v. BackgroundChecks.com*, C.A. No. 13-029 2015 WL 11004870 (E.D. Va. Aug. 5, 2015)

*Henderson v. Acxiom Risk Mitigation, Inc.*, C.A. No. 12-589 (E.D. Va., Aug. 7, 2015)  
*Magallon v. Robert Half International, Inc.* WL 8778398 (D. Or. Nov. 10, 2015)  
*Carter v. McDonald's Restaurants*, 15-01531-MWF (March 15, 2015)  
*Patel v. Trans Union, LLC*, 308 F.R.D. 292 (N.D. Cal. 2014)  
*Goode v. First Advantage LNS Screening Sols., Inc.*, No. 11-cv-02950 (E.D. Pa. Dec. 29, 2014)  
*Blandina v. Midland Funding, LLC*, 2014 WL 7338744 (E.D. Pa. Dec. 23, 2014)  
*King v. General Information Services, Inc.*, C.A. No. 11-06850 (E.D. Pa. Nov. 4, 2014)  
*Robinson v. General Information Services, Inc.*, C.A. No. 11-07782 (E.D. Pa. Nov. 4, 2014)  
*Ramirez v. Trans Union, LLC*, 2014 WL 3734525 (N.D. Cal. July 24, 2014)  
*White v. Experian Information Solutions*, 993 F. Supp. 2d 1154, 1172 (C.D. Ca. 2014)  
*Sapp v. Experian Information Solutions, Inc.*, 2:10-04312 (E.D. Pa. Jan. 29, 2013)  
*LaRocque v. TRS Recovery Services, Inc.*, 2012 WL 291191 (D. Me. July 17, 2012)  
*Ryals et al. v. Hireright Solutions, Inc.*, C.A. No. 3:09-625 (E.D. Va. July 7, 2011)  
*Serrano v. Sterling Testing Systems, Inc.*, 711 F. Supp. 2d 402 (E.D. Pa. 2010)  
*Summerfield v. Equifax Info. Services, LCC*, 2009 WL 3234191 (D. N.J. Sept. 30, 2009)  
*Chakejian v. Equifax Info. Services, LLC*, 256 F.R.D. 492, 2009 WL 764656 (E.D. Pa. 2009)  
*Barel v. Bank of America*, \_\_ F.R.D. \_\_, 2009 WL 122805 (E.D. Pa. 2009)  
*Mann v. Verizon*, C.A. No. 06-5370 (E.D. Pa. Sept. 26, 2008)  
*Smith v. Grayling Corp.*, 2008 WL 3861286, C.A. No. 07-1905 (E.D. Pa. 2008)  
*Strausser v. ACB Receivables Management, Inc.*, 2008 WL 859224 (E.D. Pa., March 28, 2008)  
*Nienaber v. Citibank (South Dakota), N.A.*, 2007 WL 2003761 (D.S.D., July 5, 2007)  
*Jordan v. Commonwealth Financial Sys., Inc.*, 237 F.R.D. 132, 2006 WL 2294855 (E.D. Pa. 2006)  
*Seawell v. Universal Fidelity Corp.*, 235 F.R.D. 64 (E.D. Pa. 2006)  
*Perry v. FleetBoston Financial Corp.*, 299 F.R.D. 105, 2005 WL 1527694 (E.D. Pa. 2005)  
*Beck v. Maximus, Inc.*, 2005 WL 589749 (E.D. Pa. 2005); *vacated on other grounds, Beck v. Maximus*, 457 F. 3d 291, 2006 WL 2193603 (3d. Cir. Aug. 4, 2006)  
*Stoner v. CBA Information Services*, 352 F. Supp. 2d 549 (E.D. Pa. 2005)  
*Bittner v. Trans Union, LLC*, C.A. No. 04-2562 (E.D. Pa. January 4, 2005)  
*Wisneski v. Nationwide Collections, Inc.*, 227 F.R.D. 259 (E.D. Pa. 2004)  
*Petrolito v. Arrow Financial Services, LLC*, 221 F.R.D. 303 (D. Conn. 2004)  
*Orloff v. Syndicated Office Systems, Inc.*, 2004 WL 870691 (E.D. Pa. 2004)  
*Bonett v. Education Debt Services, Inc.*, 2003 WL 21658267 (E.D. Pa. 2003)  
*Gaumer v. The Bon-Ton Stores*, C.A. No. 02-8611 (E.D. Pa. Dec. 30, 2003)  
*Street v. Portfolio Recovery Associates*, C.A. No. 01-3684 (E.D. Pa. July 30, 2003)

*Samuel-Bassett v. Kia Motors America, Inc.*, 212 F.R.D. 271 (E.D. Pa. 2000), *vacated on other grounds*

*Oslan v. Law Offices of Mitchell N. Kay*, 232 F. Supp. 2d 436 (E.D. Pa. 2002)

*Oslan v. Collection Bureau of Hudson Valley*, 206 F.R.D. 109 (E.D. Pa. 2002)

*Saunders v. Berks Credit & Collections*, 2002 WL 1497374 (E.D. Pa. 2002)

*Schilling v. Let's Talk Cellular and Wireless*, 2002 U.S. Dist. LEXIS 3352 (E.D. Pa. 2002)

*Fry v. Hayt, Hayt and Landau*, 198 F.R.D. 461 (E.D. Pa. 2000)

*Smith v. First Union Mortgage Corporation*, 1999 WL 509967 (E.D. Pa. 1999)

*Miller v. Inovision*, C.P. Phila. County, December Term, 1999, No. 3504

### **NOTABLE CASES**

- *Schwartz v. Aracor Search & Abstract, Inc.*, 2014 WL 4493662 (E.D. Pa. Sept. 11, 2014) (upholding compensatory and punitive damages judgment against title company that misappropriated certain funds at real estate closing)
- *Ferguson v. Wells Fargo Bank, NA*, 538 Fed. Appx. 782 (9th Cir. 2013) (reversing summary judgment for bank that failed to properly remove bankruptcy notation)
- *King v. General Info. Servs., Inc.*, 903 F. Supp. 2d 303 (E.D. Pa. 2012) (first court to uphold constitutionality of FCRA's obsolescence provision)
- *Seamans v. Temple University*, Civil No. 11-6774 (E.D. Pa., Oct. 28, 2011) — precedential case of first impression before U.S. Court of Appeals for the Third Circuit addressing duties of furnishers and interplay between the FCRA and HCA.
- *Adams v. LexisNexis Risk & Info. Analytics Group, Inc.*, 2010 WL 1931135 (D.N.J. May 12, 2010) (first court to find that consumers may sue under FRCA over information in specialty Accurint report used by debt collectors)
- *Dixon-Rollins v. Trans Union, LLC*, Civil No. 09-646 (E.D. Pa., April 10, 2010) – \$530,000 jury verdict against a credit reporting agency that falsely reported an old landlord collection claim for rent (remitted to \$300,000)
- *Shames-Yeakel v. Citizens Financial Bank*, 677 F. Supp. 2d 994 (N.D. Ill. 2009) (first court to rule that consumer may proceed to jury trial on claim that bank breached its duty to sufficiently secure its online banking system).
- *Cortez v. Trans Union, LLC*, Civil No. 05-5684 (E.D. Pa., April 26, 2007)—\$800,000 jury verdict against Trans Union in fair credit reporting case (remitted to \$150,000)
- *Samuel-Bassett v. Kia Motors America, Inc.*, C.P. Phila. County, January Term, 2001, No. 2199—5.6 million dollar verdict for class of Pennsylvania car purchasers
- *Little v. Kia Motors America, Inc.*, 2003 WL 25568765 (N.J.Super.L. 2003)—6 million dollar (approximate) verdict for class of New Jersey car purchasers, damages later decertified

- *Serrano v. Sterling Testing Systems, Inc.*, —F.Supp.2d—, 2008 WL 2223007 (E.D. Pa. May 30, 2008)—federal court finding as a matter of first impression what defines a record of arrest under the FCRA
- *Stoner v. CBA Information Services*, 352 F. Supp. 2d 549 (E.D. Pa. 2005)—obtained \$772,500 settlement for class of consumers who disputed errors in their credit reports
- *Perry v. FleetBoston Financial Corp.*, 2004 WL 1508518 (E.D. Pa. 2004)—defeated motion to compel arbitration in class action brought under Fair Credit Reporting Act
- *Crane v. Trans Union, LLC*, 282 F. Supp. 2d 311 (E.D. Pa. 2003)—federal court held that credit reporting agencies that merely parrot information from credit furnishers and fail to forward dispute documentation face claims for punitive damages under the Fair Credit Reporting Act; violation of the Fair Credit Reporting Act presents a violation of Pennsylvania’s Consumer Protection Law); *Lawrence v. Trans Union, LLC*, 296 F. Supp. 2d 582 (E.D. Pa. 2003)—same
- *Wisneski v. Nationwide Collections, Inc.*, 227 F.R.D. 259 (E.D. Pa. 2004)—in fair debt class action, Pennsylvania federal court held for the first time that statutory net worth limitation is not limited to balance sheet net worth, and includes equity, capital stock and goodwill
- *Evantash v. G.E. Capital Mortgage Services, Inc.*, 2003 WL 22844198 (E.D. Pa. 2003)—in fair credit reporting case, court held that technical accuracy is not a defense
- *Sheffer v. Experian Information Solutions, Inc.*, 2003 WL 21710573 (E.D. Pa. 2003)—federal court held that Fair Credit Reporting Act permits as recoverable damage emotional distress in trying to correct errors in a consumer’s credit file, even where no pecuniary or out-of-pocket losses
- *Sheffer v. Experian Information Solutions Inc.*, 249 F. Supp. 2d 560 (E.D. Pa. 2003)—federal court held that FCRA provides a private right of action against furnishers of information
- *Sullivan v. Equifax, Inc. et al.*, 2002 U.S. Dist. LEXIS 7884 (E.D. Pa. 2002)—federal court held that reporting a debt to a credit reporting agency is a communication covered by the Fair Debt Collection Practices Act
- *Wenrich v. Cole*, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. 2000)—federal court held that FDCPA provides protection for all persons, not just consumers
- *Jaramillo v. Experian Information Solutions, Inc.*, 155 F. Supp. 2d 356 (E.D. Pa. 2001); 2001 U.S. Dist. LEXIS 10221 (E.D. Pa. 2001)—federal court held that single publication rule does not apply to actions brought for violation of the Fair Credit Reporting Act

### **PRESENTATIONS/LECTURES BY INVITATION**

Speaker, *Spring Training 2023 (FCRA)*, National Association of Consumer Advocates, New Orleans, LA, May 3-5, 2023

Speaker, *Spring Training 2022 (FCRA)*, National Association of Consumer Advocates, Phoenix, AZ, May 11-14, 2022

Speaker, *Consumer Rights Litigation Conference*, National Consumer Law Center's Office Hours with the FCRA Stars, December 6-17, 2021

Speaker, *Spring Training 2020 (FCRA)*, National Association of Consumer Advocates, Online Webinars, May 1-June 30, 2020

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Long Beach, CA, May 1-4, 2019

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Baltimore, MD, April 22-29, 2017

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Las Vegas, NV, May 1-3, 2015

Speaker, *Fair Debt Collection Experienced Training Conference*, National Association of Consumer Advocates, Baltimore, MD, March 7-8, 2013

Speaker, *Fair Debt Collection Experienced Training Conference*, National Association of Consumer Advocates, New Orleans, LA, February 23-24, 2012

Speaker, *Negotiating 101*, National Association of Consumer Advocates, Memphis, TN, May 20-22, 2011

Speaker, *Fair Credit Reporting Act Conference*, National Association of Consumer Advocates, Chicago, IL, May 8-10, 2009

Speaker, *Fair Debt Collection Experienced Training Conference*, National Association of Consumer Advocates, Nashville, TN, March 27-29, 2008

Speaker, *Litigation Trends: "Getting to Know the Other Team"*, 11th Annual DBA International World Championship of Debt Buying, Las Vegas, NV, February 5-7, 2008

Speaker, *Protecting Vulnerable Consumers and Promoting Marketplace Justice*, Consumer Rights Litigation Conference, National Consumer Law Center, Miami, FL, November 10-13, 2006

Speaker, *FCRA: Playing to Win*, National Association of Consumer Advocates, Las Vegas, NV, May 5-7, 2006

Speaker, *Litigating Accuracy Issues With Furnishers of Credit Data*, National Association of Consumer Advocates, New Orleans, LA, June 2-5, 2005

Speaker, *Understanding Credit Scoring*, Consumer Rights Litigation Conference, National Consumer Law Center, Boston, MA, November 7, 2004

Speaker, *Litigating Accuracy Issues With Credit Reporting Agencies*, National Association of Consumer Advocates, Chicago, Ill., May 14-16, 2004

Speaker, *FCRA/Building On Our Success*, National Association of Consumer Advocates, Orlando, FL, March 7-9, 2003

Speaker, *Protecting Privacy, Ensuring Accuracy*, National Association of Consumer Advocates, Albuquerque, NM, June 1, 2002

Faculty/Speaker, *Credit Reporting and Debt Collection Litigation*, Municipal Court Judicial Conference (CLE), Pennsylvania, PA, May 6, 1999



## **PUBLICATIONS**

*CFPB Details Student Loan Servicers' Struggles in Wake of Borrowers Resuming Payments, The Legal Intelligencer, (February, 2024)*

*Third Circ. Clarifies Furnishers' Duties Under the FCRA to Probe Indirect Disputes, 268 The Legal Intelligencer, 5, 8 (2023)*

*CFPB Explores AI's Impact on Consumers' Relationships With Financial Institutions, 268 The Legal Intelligencer, 5, 8 (2023)*

*CFPB Reminds Consumer Reporting Agencies to Toss 'Junk Data' in the Trash, 266 The Legal Intelligencer, 5, 8 (2022)*

*Your Clients' Consumer Rights Legal Issues May Be Hiding in Plain Sight, 264 The Legal Intelligencer, 7-8 (2021)*

## **COMMITTEE APPOINTMENTS AND POSITIONS**

Mark regularly lectures for continuing legal education programs, law schools and community groups throughout the country, and has been a regular speaker for the National Association of Consumer Advocates (NACA) and National Consumer Law Center (NCLC) for over 20 years. He is a certified arbitration panelist with the Federal Arbitration Panel and serves on the Editorial Board of the Consumer Financial Services Law Report. Additionally, Mark is a member of the Pennsylvania Trial Lawyers Association, Philadelphia Trial Lawyers Association, Philadelphia Bar Association, and National Association of Consumer Advocates, and regularly serves on the Philadelphia Bar Association's Federal Courts Committee.

## **JOHN SOUMILAS**

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JOHN SOUMILAS is a partner of the firm. His primary office is located in Philadelphia. A seasoned litigator, John has represented thousands of consumers in individual cases and class actions, with career settlements and verdicts valued at more than \$180M. He currently represents persons defamed and otherwise harmed by credit reporting, employment background and tenant screening errors, victims of identity theft, students and student loan borrowers, individuals harassed and deceived by collectors and other businesses, as well as consumers who are subjected to unwelcome invasions of their privacy, overcharging, and other deceptive trade practices.

John has been repeatedly recognized by Philadelphia Magazine as a "SuperLawyer," a recognition received by only 5% of attorneys in Pennsylvania. He has been nationally recognized for his work in protecting consumer rights under the federal Fair Credit Reporting Act (FCRA). Throughout his career, John has obtained some of the highest consumer jury verdicts, including the highest known FCRA verdicts in Pennsylvania, California, and Michigan, and had been appointed by federal judges as class counsel in some of the largest FCRA class cases and settlements.

John lives in Philadelphia with his wife and has four adult children. John is a 1994 *cum laude* graduate of Rutgers University, where he was inducted into Phi Beta Kappa. He also holds

a master's degree in American history from Stony Brook University, obtained in 1996. John received his law degree *cum laude* from the Temple University Beasley School of Law in 1999, where he was a member of the Temple Law Review. He began his legal career by clerking for Justice Russell M. Nigro of the Supreme Court of Pennsylvania.

## **ADMISSIONS**

John has been admitted to practice before the United States Supreme Court, United States Courts of Appeals for the First, Second, Third, Fourth, Sixth, Seventh, Ninth and Eleventh Circuits, the United States District Courts for the District of Colorado, Eastern District of Michigan, Eastern District of Pennsylvania, and the District of New Jersey, as well as the state courts of Pennsylvania and New Jersey. He has also successfully litigated cases on a *pro hac vice* basis throughout the country.

## **RECENT WORK**

John is known for his ability to tackle a wide array of novel and complex legal problems. A sampling of his work in recent years is set forth below:

### False Terrorist Alerts on Credit Reports

- *Martinez v. Avantus, LLC*, 343 F.R.D. 254 (D. Conn. 2023) (certified class of mortgage applicants in case involving the reporting of inaccurate OFAC “terrorist” alerts appearing on the credit reports of innocent American consumers); later settled for \$6.7M; *Kang v. Credit Bureau Connection, Inc.*, No. 18-01359, 2022 WL 658105 (E.D. Cal. Mar. 4, 2022) (certified class of car buyers in case involving the reporting of inaccurate OFAC alerts) (also appointed class counsel and represented classes of similar consumers for false OFAC alert claims in *Patel v. Trans Union, LLC*, 308 F.R.D. 292 (N.D. Cal. 2015); later settled for \$8M; and *Ramirez v. Trans Union, LLC*, 301 F.R.D. 408 (N.D. Cal. 2014); *see also Ramirez v. Trans Union LLC*, 951 F.3d 1008 (9th Cir. 2020) (upholding certification of entire class, but reversed for portion of class that lacked Article III standing per *Trans Union LLC v. Ramirez*, 141 S. Ct. 2190 (2021); later settled for over \$9M.

### Unlawful College Charges and Student Loan Collections

- *Teran v. Navient Sols. (In re Teran)*, No. 10-31718, 2022 Bankr. LEXIS 381 (Bankr. N.D. Cal. Feb. 15, 2022) (summary judgment ruling siding with class of student debtors who had collection efforts taken against them even though certain of their student loans were discharged in their bankruptcies); later certified and settled as part of nationwide \$28M damages and \$54M debt forgiveness deal, *Woodard v. Navient Sols.*, No. 8:23-cv-301, 2024 WL 94468 (D. Neb. Jan. 9, 2024);
- *Botts v. Johns Hopkins Univ.*, No. 20-1335, 2021 WL 1561520 (D. Md. Apr. 21, 2021) (leading decision in litigation against universities for class of undergraduate and graduate students claiming overcharging during the Covid-19 pandemic, upholding breach of contract and unjust enrichment claims) later settled for over \$10M;
- *Seamans v. Temple University*, 744 F.3d 853 (3d Cir. 2014) (reversing summary judgment for credit furnisher concerning improperly reported old student loan debt, and setting standard for

certain delinquent student debt that cannot be reported to the credit agencies after seven-and-a-half years).

#### Credit Reporting Errors and Problems

- *Norman v. Trans Union, LLC*, 669 F. Supp. 3d 351 (E.D. Pa. 2023) (finding that credit reporting agency must reinvestigate consumers' disputes of contested "hard inquiries" (credit applications) and refusing agency's request to de-certify class); *Norman v. Trans Union, LLC*, 479 F.Supp.3d 98 (E.D. Pa. Aug. 14, 2020) (first court to certify class action for credit report agency's failure to investigate hundreds of thousands of consumer disputes of certain inquiries disputed as unauthorized); followed by *Rivera v. Equifax Info. Servs., LLC*, 341 F.R.D. 328 (N.D. Ga. 2022) (certifying even larger class of over 300,000 consumers for same claim);
- *Adams v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 08-4708, 2010 WL 1931135 (D.N.J. May 12, 2010) (first court to find that consumers may sue under FRCA over personal information in specialty Accurant credit report used by debt collectors and others) (leading to *Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 11-754, 2014 WL 4403524 (E.D. Va. Sept. 5, 2014) and resulting in \$13.5M class action settlements with LexisNexis);
- *Ferguson v. Wells Fargo Bank, NA*, 538 Fed. Appx. 782 (9th Cir. 2013) (reversing summary judgment for bank that failed to remove bankruptcy notation from consumer's credit report).

#### Tenant and Employment Screening Violations

- *In re TransUnion Rental Screening Sols., Inc., Fair Credit Reporting Act Litig.*, 437 F. Supp. 3d 1377, 1378 (U.S. Jud. Pan. Mult. Lit. 2020) (later settled in 2023 for over \$11M to compensate victims of inaccurate data on tenant screening reports);
- *McIntyre v. RealPage, Inc.*, 336 F.R.D. 422 (E.D. Pa. Aug. 25, 2020) (certifying claim on behalf of tenant applicants for improper reporting of stale eviction records against them in largest tenant screening class to date); later settled for over \$6.3M;
- *Kelly v. Business Information Group*, No. 15-6668, 2019 WL 414915 (E.D. Pa. Feb. 1, 2019) (as part of approval of over \$3.1M class settlement requiring employment background screener to provide important "same time" notice to job candidates of any adverse information being included in their background reports);
- *Leo v. AppFolio, Inc.*, No. 17-5771, 2018 WL 623647 (W.D. Wash. Jan. 30, 2018) (upholding class action claims against start-up tenant screening company); later settled for \$4.5M;
- *Flores v. Express Personnel*, No. 14-03298, 2017 WL 1177098 (E.D. Pa. Mar. 30, 2017) (certifying settlement class regarding improper background screening practices by a job placement agency); later settled for over \$6M;
- *Magallon v. Robert Half International, Inc.*, 311 F.R.D. 626 (D. Or. Nov. 10, 2015) (one of few cases certifying a 5-year FCRA class on contest for failure to timely disclose adverse temp-placement decisions against job placement agency).

#### NOTEWORTHY CASES

Throughout his career, John has litigated some of the most groundbreaking consumer rights cases including several cases involving issues of first impression. The following is a list of cases involving complex and novel issues that John had litigated through the years:

- *Teran v. Navient Sols. (In re Teran)*, 649 B.R. 794 (Bankr. N.D. Cal. March 30, 2023) (certifying circuit-wide damages class and also nationwide injunctive class of student loan borrowers of non-Title IV loans subjected to unlawful post-bankruptcy collection efforts);
- *Clark v. Trans Union, LLC*, No. 15-391, 2017 WL 814252 (E.D. Va. Mar. 1, 2017) (certifying one of first misreported public records FCRA classes);
- *Schwartz v. Aracor Search & Abstract, Inc.*, No. 13-870, 2014 WL 4493662 (E.D. Pa. Sept. 11, 2014) (upholding compensatory and punitive damages judgment against title company that misappropriated certain funds at real estate closing);
- *King v. General Info. Servs., Inc.*, 903 F. Supp. 2d 303 (E.D. Pa. 2012) (first court to uphold constitutionality of FCRA's obsolescence provision for old or outdated background history);
- *Howley v. Experian Info. Solutions, Inc.*, 813 F. Supp. 2d 629 (D.N.J. 2011) (first court to find that consumer may sue agency that improperly disclosed information to an identity thief);
- *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010) (upholding first ever court finding that false terrorist/OFAC alerts are subject to the FCRA, also upholding punitive damages of case tried by same counsel before a jury at the district court level, *Cortez v. Trans Union, LLC*, No. 05-5684 (E.D. Pa. Apr. 26, 2007));
- *Chakejian v. Equifax Info. Servs., LLC*, 256 F.R.D. 492 (E.D. Pa. 2009) (first certified class action under FCRA section 1681i regarding consumer disputes);
- *Shames-Yeakel v. Citizens Financial Bank*, 677 F. Supp. 2d 994 (N.D. Ill. 2009) (first court to rule that consumer may proceed to jury trial on claim that bank breached its duty to sufficiently secure its online banking system).

## **LECTURES / PUBLICATIONS**

John is also a regular lecturer on consumer matters, including for the National Business Institute, National Consumer Law Center, Practicing Law Institute, National Association of Consumer Advocates, and other organizations. John has been interviewed and quoted concerning many legal issues affecting consumers by a wide range of media outlets, from the Wall Street Journal and Forbes Magazine to Consumer Reports and Free Speech Radio. He has authored several popular and scholarly articles, including *Third Circuit Refuses to Allow Litigant to Sidestep Its Chosen Arbitration Body's Rules* (The Legal Intelligencer Feb. 2, 2024); *CFPB Tries to Nip New Wave of Unlawful Medical Debt Collection in the Bud* (The Legal Intelligencer Apr. 1, 2022), *Predatory Lending, the FCRA and the FDCPA* (NBI 2009), and *How Can I Combat Identity Theft* (Philadelphia Magazine, Dec. 2008).

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## **LAUREN KW BRENNAN**

LAUREN KW BRENNAN is a partner of the firm. Lauren is a zealous consumer advocate and skilled litigator who has spent her entire career seeking to vindicate the rights of consumers. She concentrates her practice on class action litigation on behalf of consumers harmed by credit

reporting errors, inaccurate employment background screening, abusive debt collection practices, and other unfair and fraudulent trade practices. Lauren lives in West Philadelphia with her husband and two children.

### **EDUCATION**

Temple University Beasley School of Law J.D. *cum laude*, 2013; Beasley Scholar, Temple Political & Civil Rights Law Review

Swarthmore College, B.A. 2008

### **ADMISSIONS**

Lauren has been admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Second, Third, Seventh, Ninth, and Eleventh Circuits, the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey, as well as in state courts in Pennsylvania and New Jersey. She has also successfully litigated cases after being admitted *pro hac vice* in federal district courts around the country.

### **NOTABLE CASES**

- *Hernandez v. MicroBilt Corporation*, 88 F.4th 215 (3d Cir. 2023) (upholding denial of CRA’s motion to compel arbitration of claims regarding misreporting of terrorist watch list information, confirming that claims return to court where AAA declined to administer dispute).
- *Kelly v. RealPage, Inc.*, 47 F.4th 202 (3d Cir. 2022) (after granting Plaintiff’s Rule 23(f) petition for permission to appeal, holding that consumers had Article III standing for claim that tenant screening company failed to disclose sources of information, that consumers are not required to use term “file” in order to trigger disclosure obligations, and that class is ascertainable under Rule 23 even where individual review of objective records is required).
- *Healy v. Milliman, Inc.*, No. 2:20-cv-01473-JCC (W.D. Wash. 2022) at ECF 126 (Apr. 29, 2022 order certifying FCRA accuracy claims of over 300,000 consumers who were the subject of inaccurate reports regarding medical and prescription history)
- *Ramirez v. Trans Union, LLC*, 951 F.3d 1008 (9th Cir. 2020), 141 S.Ct. 2190 (2021); 2022 WL 17740302 (N.D. Cal. Dec. 22, 2022). Member of plaintiff’s trial team in record \$60 million jury verdict for a case brought under the Fair Credit Reporting Act; central contributor to post-trial briefing and appellate proceedings including at the U.S. Court of Appeals for the Ninth Circuit and in the U.S. Supreme Court; later settled for \$9 million

### **CLASS COUNSEL CERTIFICATIONS**

*Martinez v. Avantus, LLC*, No. 3:20-CV-1772 (JCH), 2023 WL 112807 (D. Conn. Jan. 5, 2023)

*Healy v. Milliman, Inc.*, No. 2:20-cv-01473-JCC (W.D. Wash. 2022)

*Watson v. Checkr, Inc.*, No. 3:19-cv-03396-EMC (N.D. Cal. 2021)  
*Deaton v. Trans Union, LLC*, No. 2:20-cv-01380-AB (E.D. Pa. 2021)  
*Sanders v. Makespace Labs, Inc.*, No. 1:18-cv-10016 (S.D.N.Y. 2021)  
*McIntyre v. RealPage, Inc., d/b/a On-Site*, No. 2:18-cv-03934-CFK (E.D. Pa. 2020)  
*Norman v. Trans Union, LLC*, No. 18-5225, 2020 WL 4735538 (E.D. Pa. Aug. 14, 2020)  
*Der-Hacopian v. DarkTrace, Inc.*, No. 4:18-cv-06726-HSG (N.D. Cal. 2020)  
*Der-Hacopian v. SentryLink*, No. 8:18-cv-03001-PWG (D. Md.)  
*Taylor v. GfK Custom Research, Inc.*, No. 1:16-cv-09968-ER (S.D.N.Y. 2019)  
*Leo v. AppFolio, Inc.*, No.3:17-cv-05771-RJB (W.D. Wash. 2019)  
*Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va. 2018)  
*Kelly v. Business Information Group*, C.A. 15-6668, 2019 WL 414915 (E.D. Pa. 2019)  
*Flores v. Express Personnel*, C.A. No. 14-cv-03298, (E.D. Pa. Oct. 21, 2016)  
*Larson v. Trans Union, LLC*, C.A. No. 12-cv-05726, (N.D. CA, Aug. 11, 2016)  
*Miller v. Trans Union, LLC*, C.A. No. 12-cv-1715, (M.D. Pa. Dec. 26, 2016)  
*Henderson v. Trans Union, LLC*, C.A. No. 14-cv-00679 (E.D. Va. May 3, 2016)  
*Pawlowski v. United Tranzactions, LLC*, C.A. no. 15-cv-2330, (E.D. Pa. April 18, 2016)  
*Rodriguez v. Calvin Klein, Inc.*, C.A. 1:15-cv-02590 (S.D.N.Y. 2015)  
*Giddiens v. Infinity Staffing*, C.A. No. 13-cv-07115, (E.D. Pa. Jan. 12, 2016)  
*Giddiens v. First Advantage*, C.A. No. 14-cv-5105, (E.D. Pa. July 11, 2015)  
*Magallon v. Robert Half International, Inc.*, 2015 WL 8778398 (D. Or. Nov. 10, 2015)  
*Patel v. Trans Union, LLC*, 308 F.R.D. 292 (N.D. Cal. 2014)  
*Blandina v. Midland Funding, LLC*, 2014 WL 7338744 (E.D. Pa. Dec. 23, 2014)  
*Robinson v. General Information Services, Inc.*, No. 11-07782 (E.D. Pa. Nov. 4, 2014)  
*Ramirez v. Trans Union, LLC*, 2014 WL 3734525 (N.D. Cal. July 24, 2014)

### **LECTURES/PUBLICATIONS**

Speaker, *Consumer Financial Services Fundamentals 2024*, Practicing Law Institute, New York City, “The Credit Reporting Ecosystem: Major Players and Overview of the Key Laws That Apply,” March 15, 2024.

Speaker, *Consumer Law Basics Webinar Series*, Social Law Library & National Consumer Law Center, “FCRA Basics,” Webinar, March 5, 2024.

Speaker, *Consumer Rights Litigation Conference*, National Consumer Law Center, Chicago, IL “ABCs of FCRA,” October 26, 2023.

Co-author, “FCRA Remedies When Criminal Records Lead to Rental Denials” National Consumer Law Center, September 21, 2023.

Speaker, *Spring Training Class Action Workshop*, National Association of Consumer Advocates, New Orleans, LA “Class Action Trials,” May 3, 2023.

Co-Chair, *Spring Training - Case Valuation and Damages Track*, National Association of Consumer Advocates, Phoenix, AZ May 11-14, 2022.

Facilitator, *Spring Training*, National Association of Consumer Advocates, Online Webinar, “FCRA Background Screening Networking Session” April 29, 2021.

Speaker, *Consumer Rights Litigation Conference*, National Consumer Law Center, Online Webinar “FCRA Mini-Intensive, Specialty CRAs Part 2: Tenant Screening” November 12, 2020.

Planning Committee, *Spring Training – FCRA Track*, National Association of Consumer Advocates, Online Webinar, April 30-May 2, 2020.

Speaker, *FCRA Conference*, National Association of Consumer Advocates, Long Beach, CA “Trial Updates,” May 4, 2019.

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## DAVID A. SEARLES

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DAVID A. SEARLES, of counsel to the firm, is admitted to practice before the Supreme Court of the United States, the United States Courts of Appeals for the Third, Fourth and Sixth Circuits, and the United States District Courts for the District of Maryland, the District of Colorado, the Northern District of Oklahoma, and Eastern and Middle Districts of Pennsylvania, as well as the state courts of Pennsylvania. He is a graduate of the American University School of Law, Washington, D.C., where he served on law review.

Following graduation from law school, Mr. Searles was an attorney for Community Legal Services of Philadelphia, where he specialized in consumer and bankruptcy law. In 1990, he successfully argued the first consumer reorganization bankruptcy case considered by the U.S. Supreme Court, *Pennsylvania v. Davenport*, 495 U.S. 552 (1990), and has served as lead counsel and presented arguments in numerous consumer law cases before the United States Court of Appeals for the Third Circuit. From 1992 through 1997, Mr. Searles was associated with the Philadelphia law firm of Drinker Biddle & Reath LLP, where his practice focused on Chapter 11 bankruptcy and creditors’ rights. Thereafter, he was a member of Donovan Searles, LLC until 2011, specializing in consumer class action litigation.

In 2005, Mr. Searles was awarded the Equal Justice Award at the Community Legal Services Breakfast of Champions for his role in directing funding for legal assistance for low-income residents of Philadelphia. Mr. Searles has served as the Pennsylvania contributor to SURVEY OF STATE CLASS ACTION LAW (ABA Section of Litigation – 2010), and as a contributing author of PENNSYLVANIA CONSUMER LAW (2010). He has taught advanced bankruptcy law at the

Rutgers University School of Law – Camden, business law at Widener University and bankruptcy law at Pierce Junior College, Philadelphia. He is a past co-chairperson of the Education Committee of the Eastern District of Pennsylvania Bankruptcy Conference. Mr. Searles has been named a Pennsylvania Super Lawyer for many years.

### **CLASS ACTIONS**

*Lucas v. Accutrace, Inc.*, No. 18-9059 (S.D.N.Y. June 29, 2020);  
*Kelly v. Business Information Group*, 2019 WL 414915 (E.D. Pa. 2019);  
*Gibbons v. Weltman, Weinberg & Reis Co., LPA*, 2018 WL 5720749 (E.D. Pa. Oct. 31, 2018);  
*Patel v. Trans Union, LLC*, 2018 WL 1258194 (N.D. Ca. March 11, 2018);  
*Carter v. Shalhoub Management Company, Inc.*, 2017 WL 5634300 (C.D. Ca. March 15, 2017);  
*Flores v. Express Services, Inc.*, 2017 WL 1177098 (E.D. Pa. March 30, 2017);  
*Miller v. Trans Union, LLC*, 2017 WL 412641 (M.D. Pa. Jan. 18, 2017);  
*Larson v. Trans Union, LLC*, No. 12-5726 (N.D. Ca. June 26, 2015);  
*Blandina v. Midland Funding, LLC*, 2014 WL 7338744 (E.D. Pa. Dec. 23, 2014);  
*King v. General Information Services, Inc.*, C.A. No. 2:11-cv-06850 (E.D. Pa. Nov. 4, 2014);  
*Robinson v. General Information Services, Inc.*, C.A. No. 2:11-cv-07782 (E.D. Pa. Nov. 4, 2014);  
*Jones v. Midland Funding, LLC*, 2013 WL 12286081 (D. Conn. Dec. 3, 2013);  
*Sapp v. Experian Information Solutions, Inc.*, 2:10-cv-04312 (E.D. Pa. Jan. 29, 2013);  
*Reibstein v. Rite Aid Corporation*, 2011 WL 192512 (E.D. Pa. Jan. 18, 2011);  
*McCall v. Drive Financial*, January Term 2006, No. 0005 (C.P. Phila. July 20, 2010);  
*Serrano v. Sterling Testing Systems, Inc.*, 711 F.Supp.2d 402 (E.D. Pa. 2010);  
*Summerfield v. Equifax Information Services, LLC*, 264 F.R.D. 133 (D.N.J. 2009);  
*Chakejian v. Equifax Information Services, LLC*, 256 F.R.D. 492 (E.D. Pa. 2009);  
*Barel v. Bank of America*, 255 F.R.D. 393 (E.D. Pa. 2009);  
*Markocki v. Old Republic National Title Ins. Co.*, 254 F.R.D. 242 (E.D. Pa. 2008);  
*Strausser v. ACB Receivables Management, Inc.*, 2008 WL 859224 (E.D. Pa. Mar. 28, 2008);  
*Allen v. Holiday Universal, Inc.*, 249 F.R.D. 166 (E.D. Pa. 2008);  
*Cohen v. Chicago Title Insurance Company*, 242 F.R.D. 295 (E.D. Pa. 2007);  
*Jordan v. Commonwealth Financial Systems, Inc.*, 237 F.R.D. 132 (E.D. Pa. 2006);  
*Braun v. Wal-Mart Stores, Inc.*, 2005 WL 3623389 (C.P. Phila. Dec. 27, 2005);  
*Perry v. FleetBoston Financial Corp.*, 229 F.R.D. 105 (E.D. Pa. 2005);  
*Beck v. Maximus, Inc.*, 2005 WL 589749 (E.D. Pa. March 11, 2005);  
*Stoner v. CBA Information Services*, 352 F.Supp.2d 549 (E.D. Pa. 2005);



*Orloff v. Syndicated Office Systems, Inc.*, 2004 WL 870691 (E.D. Pa. April 22, 2004);  
*Petrolito v. Arrow Financial Services, LLC*, 221 F.R.D. 303 (D. Conn. 2004);  
*Piper v. Portnoff Law Associates, Ltd.*, 216 F.R.D. 325 (E.D. Pa. 2003);  
*Bonett v. Education Debt Services, Inc.*, 2003 WL 21658267 (E.D. Pa. 2003).

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**GEOFFREY H. BASKERVILLE**

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GEOFFREY H. BASKERVILLE is a 1982 graduate of Gettysburg College and a 1992 graduate of the Dickinson School of Law. During law school, Geoffrey published an article entitled *Human Gene Therapy: Application, Ethics and Regulation* in the Dickinson Law Review, Vol. 96, No. 4.

Since graduating from law school, Geoffrey has worked for both plaintiff and defense litigation firms practicing in the areas of medical malpractice, architect's and engineer's malpractice, the Federal Employer's Liability Act, and trucking litigation. In 2007, Geoffrey joined Francis Mailman Soumilas P.C. and began to practice in the area of consumer protection litigation, including fair credit reporting and fair debt collection.

Since that time, Geoffrey has concentrated his practice on representing consumers in cases under the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act and other consumer statutes. He has represented clients in cases against background screening companies, credit reporting agencies, banks, credit card companies and other financial institutions. Geoffrey is admitted to practice before the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey, the Eastern District of Michigan, the District of Colorado, the Western District of Texas, the Central District of Illinois, and the District of New Mexico, as well as the state courts of Pennsylvania and New Jersey.

Geoffrey is an avid amateur photographer.

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**JORDAN M. SARTELL**

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JORDAN M. SARTELL joined the class action practice of Francis Mailman Soumilas, P.C. in 2017 and litigates on behalf of consumers harmed by unlawful credit reporting, tenant screening, background checks, debt collection, and other deceptive and unfair business practices.

Jordan received his law degree *summa cum laude* from the DePaul University College of Law in 2012, where he was a member of the DePaul Law Review. Jordan began his legal career protecting vulnerable senior citizens from financial exploitation with Prairie State Legal Services. Jordan is admitted in Illinois and practices in federal district and appellate courts throughout the United States.

Jordan lives in suburban Chicagoland with his wife and two children. Jordan served on the Editorial Board of the DuPage County Bar Association's legal journal, *The Brief*, from 2014 to 2023, including as its Editor in Chief from 2021 to 2022 and Associate Editor from 2020 to 2021.

Jordan is also a member of the National Association of Consumer Advocates and regularly provides pro bono advice and counsel on a variety of consumer issues.

### **CLASS COUNSEL CERTIFICATIONS**

*Schultz v. Emory University*, No. 1:20-cv-02002-TWT, ECF 98 (N.D. Ga. June 15, 2023)

*Botts v. The Johns Hopkins University*, No. 1:20-cv-01335-JRR, ECF 96 (D. Md. April 20, 2023)

*Teran v. Navient Solutions, LLC et al.*, No. 20-03075-DM,  
2023 WL 2721904 (Bankr. N.D. Cal. Mar. 30, 2023)

*Stewart v. LexisNexis Risk Data Retrieval Serv's, LLC*,  
No. 3:20-cv-00903-JAG (E.D. Va. July 27, 2022)

*Rivera v. Equifax Info. Servs., LLC*, 341 F.R.D. 328 (N.D. Ga. 2022)

*Kang v. Credit Bureau Connection, Inc.*, No. 1:18-CV-01359-AWI-SKO,  
2022 WL 658105 (E.D. Cal. Mar. 4, 2022)

*McIntyre v. RealPage, Inc., d/b/a On-Site*, 336 F.R.D. 422 (E.D. Pa. 2020)

*Norman v. Trans Union, LLC*, 479 F. Supp. 3d 98 (E.D. Pa. 2020)

*Wills v. Starbucks Corporation*, No. 1:16-cv-3654-CAP-CMS, ECF 59 (N.D. Ga. July 16, 2020)

*Robinson v. National Student Clearinghouse*, No. 1:19-CV-10749,  
2020 WL 4873728 (D. Mass. July 8, 2020), *aff'd* 14 F.4th 56 (1st Cir. 2021)

*Shekar v. Accurate Background, Inc.*, No. 17-CV-0585,  
2020 WL 2563437 (E.D. Wis. May 14, 2020)

### **JOSEPH GENTILCORE**

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JOSEPH GENTILCORE is a passionate advocate for every one of his clients, and truly believes in the work that he does. Joseph focuses his practice on Fair Credit Reporting Act cases and other consumer protection matters under both state and federal law. He currently represents consumers in cases against credit card companies, banks, debt collectors, mortgage servicers and background check companies. Joseph has dedicated the majority of his career to representing individuals who have been wronged by large financial entities, and along the way has helped thousands of consumers obtain compensation from the corporations that have harmed them. As a result of Joseph's specialties, he has given lectures on various topics, including background checks, credit reporting inaccuracies, and mortgage fraud.

Joseph graduated Ursinus College, and Temple University School of Law.

Joseph has been lead counsel in over 300 individual federal consumer protection cases, and appointed class counsel in consumer protection matters. Every year since 2013, Joseph has been named a Super Lawyer or Rising Star by Pennsylvania Super Lawyers. Joseph is licensed to practice in Pennsylvania and New Jersey, and is admitted in numerous federal courts throughout the country.

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## SIOBHÁN MCGREAL

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SIOBHÁN MCGREAL joined Francis Mailman Soumilas, P.C. in 2021, and concentrates her advocacy on behalf of consumers harmed by credit reporting errors, inaccurate background screening reports for employment and housing applications, and other abusive and unfair trade practices. Siobhán has dedicated the majority of her career to helping those who have had difficulty having their voices heard within the legal system.

Prior to joining FMS, Siobhán was a Deputy City Solicitor in the Child Welfare Unit of the City of Philadelphia Law Department, where she litigated thousands of hearings of child abuse, child neglect, applications for orders of protective custody, permanent legal custodianship, and terminations of parental rights. She started her law career as an attorney for the Administration of Children's Services in Brooklyn, NY, before moving to Southern California and working in private practice for several years. Siobhán earned her B.A. from the University of Pennsylvania and her J.D. from New York Law School after teaching English in Thailand for a short time. She has been admitted to practice in the state courts of Pennsylvania, California, and New York, as well as before the United States District Court for the Eastern District of Pennsylvania.

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## ERIKA HEATH

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ERIKA HEATH joined Francis Mailman Soumilas, P.C. in 2020, and focuses her San Francisco practice on individual and class action litigation for consumers harmed by erroneous credit reports, inaccurate employee background checks, unlawful debt collection practices, and other unfair trade practices.

Erika is a 2002 graduate of Southern Methodist University, where she majored in business. She worked in finance in both Texas and Germany before earning her J.D. from Northeastern University School of Law in 2009. After graduating, Erika got her start as an attorney at Atlanta Legal Aid Society, where she focused on protecting low-income consumers from abusive business practices.

Both during her time as a legal aid attorney and after, Erika has participated in a number of high-profile cases. She served as lead counsel on the case of *Strickland v. Alexander*, which ultimately led to a federal court declaring Georgia's garnishment process to be unconstitutional and enjoining most consumer garnishments in the state. As a result of her work on the *Strickland* case, Erika received numerous awards, including the 2015 Consumer Achievement of the Year award from the National Association of Consumer Advocates (NACA). In the summer of 2017, she served as co-counsel in the trial of *Bowerman v. Field Asset Services, Inc.* (N.D. Cal.), which led to a jury verdict of more than \$2 million for 11 employees who were misclassified as independent contractors. She is currently a lecturer at University of California, Berkeley (BerkeleyLaw), where she teaches a course on the Fair Credit Reporting Act.

Erika moved with her family to the San Francisco Bay Area in 2015. She is licensed to practice in California, Georgia, and New York. She is an active member of the National Association of Consumer Advocates.

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## **KEVIN MALLON**

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KEVIN MALLON joined Francis Mailman Soumilas, P.C. as Of Counsel in 2020. Mr. Mallon is also the owner of Mallon Consumer Law Group, PLLC, a New York City based consumer protection law firm focused on representing consumers harmed by credit reporting agencies, debt collectors, identity theft and consumer fraud.

Mr. Mallon has obtained relief for thousands of consumers harmed by unlawful corporate conduct since becoming an attorney in 1999. He represents consumers in both individual cases and class actions. He has successfully obtained jury verdicts on behalf of consumers as well as successfully representing consumers on appeal. Mr. Mallon is recognized as a national expert in credit reporting cases and has spoken numerous times at credit reporting conferences.

Mr. Mallon received his undergraduate degree from the C.W. Post campus of Long Island University, magna cum laude, in 1995. He attended the Santa Clara University School of Law on a full Dean's scholarship, and graduated summa cum laude in 1999. He is licensed to practice in all New York State Courts as well as the Southern District of New York and Eastern District of New York federal courts.

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## **THE FIRM'S STAFF**

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The firm employs a highly qualified staff of paralegals, legal assistants, and secretaries to advance its objectives.

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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

*Plaintiff,*

v.

JOHNS HOPKINS UNIVERSITY,

*Defendant.*

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

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

Upon consideration of Named Plaintiff<sup>1</sup> Elena Botts's Unopposed Motion for Preliminary Approval of Second Settlement Addendum and Order Directing Notice to the Second Group of Additional Class Members (the "Motion"), IT IS HEREBY ORDERED:

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

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

3. The terms of this Court's August 8, 2023 Order Preliminarily Approving Settlement Addendum and Directing Notice to Additional Class Members, ECF 100, remain in effect and are fully incorporated herein by reference.

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<sup>1</sup> Capitalized terms are defined in Section 2 of the Parties' Second Addendum to Class Settlement Agreement and Release, ECF 114-2.

4. The terms of this Court's December 13, 2023 Orders finally approving the settlement and granting Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Costs and for a Service Award, ECFs 109, 110, remain in effect and are fully incorporated herein by reference.

5. The Settlement Class, defined as "all people who paid Defendant Johns Hopkins University tuition and/or fees for the Spring Semester 2020, which tuition and fees have not been refunded," appropriately encompasses the Second Group of Additional Students who may assert the claims alleged in Counts I and II of Named Plaintiff Elena Botts's Amended Complaint against Defendant Johns Hopkins University, *see* ECF 35.

6. The Second Addendum to the Class Action Settlement Agreement and Release entered into between the Parties as of March 29, 2024 (the "Second Addendum"), ECF 114-2, appears, upon preliminary review, to be fair, reasonable, and adequate to the Second Group of Additional Students, *i.e.*, those members of the Settlement Class not previously provided notice. The terms of the Second Addendum are fully incorporated herein by reference.

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

8. The Court finds that the Second Addendum concerns 2,607 members of the Settlement Class, the Second Group of Additional Students.

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

10. The Court affirms its earlier findings that (1) the attorneys for Named Plaintiff, James A. Francis, John Soumilas, Kevin C. Mallon, and Jordan M. Sartell of Francis Mailman

Soumilas, P.C. and Courtney Weiner of the Law Office of Courtney Weiner PLLC, have and will continue to adequately represent the Settlement Class and (2) their appointment as Class Counsel.

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

12. The Court will hold a Final Approval Hearing pursuant to FED. R. CIV. P. 23(e) at \_\_\_\_\_.m. on \_\_\_\_\_, 2024, in Courtroom \_\_\_\_ of the United States District Courthouse located at 101 West Lombard Street, Baltimore, Maryland for the following purposes:

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

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

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

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

13. As set forth in Section 4.1.1 of the Second Addendum, Defendant shall provide a list of Settlement Class members to the Settlement Administrator, who shall send the agreed upon Notice to the Settlement Class members in accordance with the terms of the [Second](#) Addendum.

14. The Court approves the Parties' Notice, which is attached to the Second Addendum as Exhibit C. To the extent the Parties or Settlement Administrator determine that ministerial changes to the Notice are necessary before disseminating it to the Second Group of Additional Students, they may make such changes without further application to the Court.

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

16. If a member of the Second Group of Additional Students chooses to opt-out of the Settlement Class, such Class member is required to submit a request for exclusion to the Settlement Administrator, post-marked on or before the date specified in the Notice, which shall be no later than thirty (30) days before the date of the Final Approval Hearing. The request for exclusion must include the items identified in section 4.3.4.1 of the Second Addendum. A member of the Second Group of Additional Students who submits a valid request for exclusion using the procedure identified above shall be excluded from the class for all purposes. No later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall prepare a declaration listing all the valid opt-outs received and shall provide the declaration and list to Class Counsel and Defendant's counsel, with Class Counsel then reporting the names appearing on this list to the Court before the Final Approval Hearing.

17. Members of the Second Group of Additional Students who do not file a timely and valid request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

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



- A. the member of the Second Group of Additional Students's full name, address and current telephone number;
- B. if the individual is represented by counsel, the name and telephone number of counsel and, if counsel intends to submit a request for fees, all factual and legal support for that request;
- C. all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- D. the identity of any witnesses the objector may call to testify;
- E. a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, if any, as well as true and correct copies of such exhibits; and
- F. a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

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

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

20. Neither this Preliminary Approval Order, nor the Second Addendum, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Class Released Claims. This Preliminary Approval Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the Second Addendum does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class members (including the Second Group of Additional Students), or the Defendant.

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

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

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
HONORABLE JULIE R. RUBIN  
UNITED STATES DISTRICT JUDGE