

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RAFAEL FIGUEROA, KAHLIL CABBLE,)	
TY'ANTHONY SCOTT, and RYAN PETTY <i>on</i>)	Case No. 2:20-CV-01484-LPL
<i>behalf of themselves and all others similarly</i>)	
<i>situated,</i>)	
)	
Plaintiffs,)	HONORABLE LISA PUPO
)	LENIHAN
v.)	
)	
POINT PARK UNIVERSITY,)	
)	
Defendant.)	

STIPULATION OF SETTLEMENT

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STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement”) is made as of June 30, 2023, by and among the following parties, as hereinafter defined: (1) Rafael Figueroa, Kahlil Cabble, Ty’Anthony Scott, and Ryan Petty, on behalf of themselves and the Settlement Class, by and through Class Counsel in this Action; and (2) Point Park University, by and through its attorneys in this Action. The Settlement Class Representatives and PPU are individually each a “Party” and collectively, the “Parties.”

RECITALS

On October 1, 2020, Plaintiffs Rafael Figueroa, Kahlil Cabble, Ty’Anthony Scott, and Ryan Petty (“Named Plaintiffs”) filed a class action Complaint in the United States District Court for the Western District of Pennsylvania styled *Figueroa v. Point Park University*, Case No. 2:20-cv-01484 (the “Action”) (ECF 1).

The Complaint alleged that Named Plaintiffs and putative class members are entitled to refunds of tuition, fees, and other charges because, beginning in March 2020, PPU provided classes remotely in response to the COVID-19 pandemic. The Complaint alleged that Named Plaintiffs and all other PPU students who paid tuition and fees for the Spring 2020 semester had an implied contract with PPU that entitled them to in-person instruction, and that by switching to remote education in response to the pandemic, PPU breached that implied contract. Named Plaintiffs also contended that PPU’s shift to remote education gave rise to claims of unjust enrichment, and conversion. Named Plaintiffs sought damages representing “the prorated portion of the tuition and Mandatory Fees they each paid equal to the reduction in contracted for education and services during the portion of time in the Spring 2020 semester when in-person classes were discontinued and facilities were closed by the University” and/or an equivalent refund. (*Id.* ¶ 74.)

The Complaint sought certification of a putative class of plaintiffs comprising:

The Class:

All persons who paid tuition, housing, and/or the Mandatory Fees for a student to attend in-person class(es) during the Spring 2020 semester at the University but had their class(es) moved to online learning.

(*Id.* ¶ 57.)

On December 21, 2020, PPU filed a Motion to Dismiss. (ECF 19-20.)

On February 2, 2021, the Court struck from the record PPU's Motion to Dismiss for failure to comply with the Court's October 14, 2020 order on Motions to Dismiss. (ECF 24).

On February 3, 2021, PPU refiled its Motion to Dismiss. (ECF 25-26).

On February 24, 2021, Named Plaintiffs filed papers in opposition to the Motion to Dismiss (ECF 27).

On March 11, 2021, PPU filed its Reply in Support of its Motion to Dismiss. (ECF 28.)

On August 11, 2021, the Court issued its decision on the Motion to Dismiss, denying PPU's motion as to Named Plaintiffs' claims for breach of contract and unjust enrichment, but dismissing Named Plaintiffs' claims for conversion. (ECF 36-37).

On September 2, 2021, PPU filed a Motion to Amend Order to include for certification of interlocutory appeal pursuant to 28 U.S.C. § 1292(b). (ECF 40-41).

On September 16, 2021, Named Plaintiffs filed papers in opposition to PPU's Motion to Amend. (ECF 46).

On September 24, 2021, PPU filed its Reply in Support of its Motion to Amend. (ECF 50).

On October 26, 2021, this Court denied PPU's Motion to Amend. (ECF 52-53).

On November 1, 2021, PPU filed an Answer to the Complaint. (ECF 54).

Thereafter, the Parties exchanged detailed information related to the amount of tuition and fee payments made by or on behalf of the putative class members for the Spring 2020 semester and exchanged proposals in an effort to reach a settlement of the Action.

On February 3, 2022, the Parties held their first mediation session in front of Carole Katz. Though progress was made, the Parties did not settle. (ECF 63).

The Parties began formal written discovery following the February mediation in preparation for class certification.

After partial discovery had been completed, the parties engaged in a second mediation with David B. White on September 1, 2022. (ECF 74).

On September 9, 2022, the Report of Mediation filed by David B. White informed the Court that the Parties had reached a settlement in principle. The Parties negotiated the terms of this Settlement and its supporting exhibits.

Named Plaintiffs believe that the claims asserted in the Action have merit. Nonetheless, Named Plaintiffs and their counsel recognize that PPU raised factual and legal defenses in the Action that present a risk that Named Plaintiffs may not prevail at trial or on appeal. Named Plaintiffs and their counsel have also taken into account the costs, risks, and delays associated with the continued litigation of the Action, including retention of experts and litigating through trial. Therefore, Named Plaintiffs and their counsel believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred under the terms and conditions set forth in this Settlement.

Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Named Plaintiffs' counsel have concluded that the terms and conditions of this Settlement are fair, reasonable, and adequate to resolve the alleged claims of the Settlement Class Members, and that it is in the best interests of the Settlement Class Members to settle the claims raised in the Action under the terms and conditions set forth in this Settlement.

At all times, PPU has continued to deny all allegations of wrongdoing and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Nevertheless, taking into account the uncertainty and risks inherent in litigation generally, PPU considers it desirable to resolve the Action on the terms and conditions stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that the Settlement on the terms and conditions set forth herein is in PPU's best interests.

As more fully explained below, neither the Settlement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability by any person or entity, or of the validity of any claim, defense, or any point of fact or law by any Party. All such liability is expressly denied. Neither the Settlement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by PPU, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by PPU in any action or proceeding.

Although the Parties have agreed that a class may be certified for purposes of the Settlement, such certification shall not be binding or have any legal effect if the Settlement is terminated, if the Settlement is ultimately not approved, or if the approval is reversed or modified on appeal. PPU reserves all of its objections to class certification for litigation purposes and does not consent to certification of the proposed Settlement Class for any purpose other than to effectuate the Settlement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, by and through their respective counsel, that subject to final approval of the Court, after a hearing as provided for in the Settlement pursuant to Federal Rule of Civil Procedure 23(e), and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Action and the Released Claims shall be fully and finally compromised, settled, and released and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in the Settlement.

DEFINITIONS

1. As used in this Stipulation of Settlement, the following terms have the meanings specified below:

- (a) **“Action”** means the above-captioned action.
- (b) **“Administrative Expenses”** means: (a) the costs, fees, and expenses that are incurred by the Settlement Administrator in connection with providing notice to the Settlement Class and administering the Settlement, including but not limited to, distributing the Net Settlement Fund to the Settlement Class Members; (b) fees and expenses incurred in connection with the Escrow Account; and (c) Taxes.

(c) **“Case Contribution Award”** means any payments from the Settlement Fund granted by the Court to each of the Settlement Class Representatives.

(d) **“Class Counsel”** means the law firm of Lynch Carpenter, LLP.

(e) **“Court”** means the United States District Court for the Western District of Pennsylvania, the Honorable Lisa P. Lenihan presiding.

(f) **“Effective Date”** means the first date after which all of the following events and conditions have been met or have occurred: (i) the Parties’ counsel have executed the Settlement; (ii) the Court has entered the Preliminary Approval Order; (iii) the Court has entered the Final Judgment; and (iv) the Final Judgment becomes Final.

(g) **“Escrow Agent”** means the Settlement Administrator.

(h) **“Fee Award”** means the amount of attorneys’ fees awarded by the Court to Class Counsel from the Settlement Fund.

(i) **“Final”** (with respect to a judgment or any other court order) means: (i) if no appeal is taken, the expiration of the time to file a notice of appeal under the Federal Rules of Appellate Procedure; or (ii) if an appeal is taken from the judgment or order: (1) the date of final dismissal of any such appeal, or the final dismissal of any proceeding on certiorari or otherwise; or (2) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

(j) **“Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment approving the Settlement to be entered by the Court and the Court will determine the Fee Award and the Case Contribution Awards, and award any Litigation Expenses to Class Counsel.

(k) **“Final Judgment”** means the final judgment and order to be entered by the Court approving the Settlement.

(l) **“Financial Aid”** means PPU-funded aid applied to a student’s account, whether or not the aid had a merit component. It also does not include loans or aid provided by outside organizations such as employers, foreign governments, and federal entitlement aid.

(m) **“Litigation Expenses”** means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, and settling the Action.

(n) **“Long Form Notice”** means the Notice of Class Action Settlement and Hearing, substantially in the form attached hereto as Exhibit A-2.

(o) **“Net Settlement Fund”** means the Settlement Fund less any (i) Administrative Expenses, (ii) Fee Award; (iii) Litigation Expenses, and (iii) Case Contribution Awards.

(p) **“Potential Settlement Class”** means all students enrolled in PPU’s Programs who paid tuition and/or the mandatory fees for a student to attend in-person class(es) during the Spring 2020 semester at the University but had their class(es) moved to online learning, with the exception of: (i) any person who withdrew from PPU on or before March 12, 2020; or (ii) any person enrolled for the Spring 2020 semester solely in a program that was originally delivered as an online program without regard to any changes in modality resulting from the COVID-19 pandemic.

(q) **“Potential Settlement Class Member”** means a person who falls within the definition of the Potential Settlement Class as set forth above in Paragraph 1(p).

(r) **“PPU”** means Point Park University.

(s) **“PPU’s Counsel”** means Reed Smith LLP.

(t) **“Preliminary Approval Order”** means an order granting preliminary approval of the Settlement, substantially in the form attached hereto as Exhibit A.

(u) **“Released Claims”** means any and all suits, claims, controversies, rights, agreements, promises, debts, liabilities, accounts, reckonings, demands, damages, judgments, obligations, covenants, contracts, costs (including, without limitation, attorneys’ fees and costs), losses, expenses, actions or causes of action of every nature, character, and description, in law, contract, tort or in equity, that any Releasing Party ever had, or has, or may have in the future, upon or by reason of any matter, cause, or thing whatever from the beginning of the world to the Effective Date, arising out of, concerning, or relating in any way to PPU’s transition to remote education with respect to the COVID-19 pandemic, or the implementation or administration of such remote education. This definition includes but is not limited to all claims that were brought or could have been brought in the Action.

(v) **“Released PPU Parties”** means PPU and all of its present, future, and former parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing’s respective present, future, and former officers, directors, trustees, academic affiliates, employees, faculty members, students, agents, representatives, attorneys, outside counsel, predecessors, successors, and assigns.

(w) **“Released Parties”** means each and any of the Released PPU Parties.

(x) **“Releasing Parties”** means each and any of the Releasing Settlement Class Parties.

(y) **“Releasing Settlement Class Parties”** means the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to PPU on their behalf.

(z) **“Settlement Administrator”** means A. B. Data, Ltd., 600 A. B. Data Drive, Milwaukee, WI 53217.

(aa) **“Settlement Amount”** means the \$1,250,000.00 consideration to be paid by PPU.

(bb) **“Settlement Benefit”** means each Settlement Class Member’s share of the Net Settlement Fund.

(cc) **“Settlement Class”** all students enrolled at PPU who paid tuition and/or the mandatory fees for a student to attend in-person class(es) during the Spring 2020 semester at the University but had their class(es) moved to online learning, with the exception of; (i) any person who withdrew from PPU on or before March 12, 2020; (ii) any person enrolled solely in a program for the Spring 2020 semester that was originally delivered as an online program without regard to any changes in modality resulting from the COVID-19 pandemic; (iii) any person who properly executes and files a timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

(dd) **“Settlement Class Member”** means a person who falls within the definition of the Settlement Class as set forth above in Paragraph 1(cc).

(ee) **“Settlement Class Representatives”** means Named Plaintiffs Rafael Figueroa, Kahlil Cabble, Ty’Anthony Scott, and Ryan Petty.

(ff) **“Settlement Fund”** means the Settlement Amount plus any and all interest earned thereon.

(gg) **“Settlement Website”** means the website established by the Settlement Administrator to aid in administering the Settlement.

(hh) **“Short Form Notice”** means the notice provided for in Paragraphs 17-18, substantially in the form attached hereto as Exhibit A-1.

(ii) **“Spring 2020 Tuition and Fees”** means any and all tuition and fees assessed to students by PPU for the Spring 2020 semester and does not include fees for housing or dining services, or items billed as one-time fees for the entire academic career of the student, fees that were assessed at the request of the student, or penalty fees, including document fees, ID card fees, elective Medical Insurance, returned check fees, collection-related fees, late fees, withdrawal fees, and flexible spending funds.

(jj) **“Taxes”** means (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the reasonable expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, the reasonable expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(kk) **“Uncashed Settlement Checks”** means any checks sent to Settlement Class Members that remain uncashed after a period of one hundred and eighty (180) days from the date of distribution of the checks to Settlement Class Members.

2. The word “or” means “and/or.”
3. The plural includes the singular and vice versa.

MONETARY RELIEF TO SETTLEMENT CLASS MEMBERS

4. The Net Settlement Fund will be allocated pro rata to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Potential Settlement Class Members enrolled at PPU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to Potential Settlement Class Members enrolled at PPU during the Spring 2020 semester, less Financial Aid, unpaid balances related to the Spring 2020 term as reflected on the Settlement Class Member’s account with PPU, and any refunds already distributed related to Spring 2020 semester.

5. The amounts to be distributed to Potential Settlement Class Members who properly execute and file a timely opt-out request to be excluded from the Settlement Class will be added together and distributed following the same pro rata method described in paragraph 4.

6. Each Settlement Class Member’s Settlement Benefit will be distributed to that Settlement Class Member automatically, with no action required by that Settlement Class Member.

7. By default, the Settlement Administrator will send the Settlement Benefit to each Settlement Class Member by check mailed to the Settlement Class Member’s last known mailing address on file with the University Registrar. The Settlement Administrator will also provide a form on the Settlement Website that Settlement Class Members may visit to (a) provide an updated address for sending a check; (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check; or (c) elect to have the Settlement Benefit applied to their PPU student account. Settlement Class Members must submit the above-referenced form no later than forty-five (45) days after the Effective Date.

8. No later than seven (7) days after the Effective Date, PPU will produce to the Settlement Administrator the information necessary for the Settlement Administrator to send the Settlement Benefits to the Settlement Class Members.¹

9. The Settlement Administrator will send the Settlement Benefits to Settlement Class Members within sixty (60) days of the Effective Date. Funds for Uncashed Settlement Checks shall, subject to Court approval, be allocated by PPU student government for the benefit of students in a manner determined by student government and consistent with applicable University policies.

RELEASE

10. The Releasing Settlement Class Parties shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released PPU Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released PPU Parties.

11. The Released Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Releasing Parties do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their decision to agree to the Settlement, their decision to release the Released Claims, or their decision not to object to the Settlement.

12. With respect to the Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, they shall be deemed to have, and by operation of the Final Judgment

¹ Consistent with the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99 (collectively, “FERPA”), PPU may disclose directory information to the Settlement Administrator. *See* 34 C.F.R. § 99.37. Moreover, any order granting preliminary or final approval of the Settlement shall constitute a judicial order within the meaning of FERPA, *see* 34 C.F.R. § 99.31(a)(9)(i), and the Settlement and the Court’s order shall constitute specific notice of PPU’s intention to comply with that order, *see* 34 C.F.R. § 99.31(a)(9)(ii).

shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASING PARTY.

13. The Releasing Parties may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, for damages, injunctive relief, rescission, disgorgement, or restitution or any other right, remedy, or relief of every nature and description whatsoever, whether based on federal, state local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, that were brought or could have been brought in the complaints in this Action without regard to subsequent discovery or the existence of different or additional facts.

14. The Releasing Settlement Class Parties agree not to commence any legal or administrative action against any Released PPU Party with respect to any Released Claim, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

CAFA NOTICE

15. The Settlement Administrator shall provide the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715(b) (“CAFA”) no later than ten (10) days following the filing of the Settlement with the Court.

CLASS NOTICE

16. Within fourteen (14) days of the entry of the Preliminary Approval Order, PPU will produce to the Settlement Administrator a list from the University Registrar’s records that includes the names and last known email and postal addresses, to the extent available, belonging to all Potential Settlement Class Members (the “Class List”). The Class List will be provided to the Settlement Administrator for the sole purpose of the Settlement Administrator performing its obligations pursuant to the Settlement and shall not be used for any other purpose at any time.

17. Following the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Short Form Notice substantially in the form attached hereto as Exhibit A-1 via email to persons listed on the Class List. If an email address is not available for a Potential Settlement Class Member, the Short Form Notice will be sent to the Potential Settlement Class Member’s last known mailing address via U.S. mail. Unless adjusted by Court order, the sending or mailing of the Short Form Notice shall be completed within forty-five (45) days after the entry of the Preliminary Approval Order.

18. The Short Form Notice shall advise the Potential Settlement Class Members of their rights under the Settlement, including the right to be excluded from and/or object to the Settlement or its terms. The Short Form Notice shall also inform Potential Settlement Class Members that they can access the Long Form Notice on the Settlement Website, which Long Form Notice shall

advise the Potential Settlement Class Members of the procedures outlined in Paragraphs 22-29, specifying how to request exclusion from the Settlement or submit an objection to the Settlement.

19. No later than forty-five (45) days after the entry of the Preliminary Approval Order, and before the issuance of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website will allow Settlement Class Members to provide an updated mailing address to receive a paper check or to elect to receive their Settlement Benefit via Venmo or PayPal. The Settlement Website shall include, in downloadable format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order; (iii) the Settlement (including all of its exhibits); and (iv) any other materials agreed upon by the Parties and/or required by the Court.

20. No later than fifty (50) days after the entry of the Preliminary Approval Order and until the Final Approval Hearing, PPU will inform Potential Settlement Class Members of the settlement and provide a link to the Settlement Website at www.pointpark.edu. No later than fifty (50) days after the entry of the Preliminary Approval Order, PPU will publish the Short Form Notice as an advertisement once in the *The Globe*, or a publication with comparable reach.

21. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Class Counsel shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the provisions of the Preliminary Approval Order concerning the distribution of the Short Form Notice to the Settlement Class.

REQUESTS FOR EXCLUSION

22. A Potential Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator, in care of the address provided in the Long Form Notice, postmarked no later than forty-five (45)

days after the issuance of the Short Form Notice (the “Objection/Exclusion Deadline”), which date shall be included in the Short Form Notice.

23. The written request for exclusion must:

- (a) include a statement requesting exclusion from the Settlement Class;
- (b) be personally signed by the Potential Settlement Class Member; and
- (c) include the Potential Settlement Class Member’s name, address, telephone

number, email address, and the caption for the Action.

24. A request to be excluded from the Settlement Class that does not include all of the foregoing information in Paragraph 23, that is sent to an address other than that designated in the Long Form Notice, or that is not postmarked within the time specified, shall be invalid and any individual sending such request shall be deemed to remain in the Settlement Class and shall be bound as a Settlement Class Member by the Settlement, if approved by the Court. Any Potential Settlement Class Member who properly elects to be excluded, in compliance with the requirements set forth in Paragraphs 22-23, shall not: (a) be bound by any orders of the Court or the Final Judgment; (b) be entitled to relief under the Settlement; (c) gain any rights by virtue of the Settlement; or (d) be permitted to object to any aspect of the Settlement.

25. A request to be excluded from the Settlement Class must be personal. Any particular Potential Settlement Class Member may not purport to opt other Potential Settlement Class Members out of the Settlement Class on a class or representative basis.

26. Class Counsel shall promptly, and in any event not less than twenty-five (25) days prior to the Final Approval Hearing, notify PPU’s Counsel of all requests for exclusion submitted by Potential Settlement Class Members and provide PPU’s Counsel with copies of any such requests for exclusion.

27. PPU has the right to audit the exclusion process for evidence of fraud or error and the Court will be the final arbiter of an exclusion's validity.

OBJECTIONS BY SETTLEMENT CLASS MEMBERS

28. Any Settlement Class Member may file a written objection to the Settlement, the Case Contribution Awards, and/or the Fee Award. The Settlement Class Member must file their written objection(s) with the Clerk of Court, or via the Court's electronic case filing system if the objection(s) are from a Settlement Class Member represented by counsel, such that they are postmarked no later than the Objection/Exclusion Deadline. Copies must also be sent at the same time via mail, hand, or overnight delivery service to Class Counsel and PPU's Counsel at the addresses set forth below.

29. The written objection(s) must:

- (a) state that the person objecting is a Settlement Class Member;
- (b) include the name, address, email, and telephone number of the Settlement Class Member objecting;
- (c) be personally signed by the objecting Settlement Class Member;
- (d) contain a statement that includes all objections, provides whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and provides the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); and
- (e) include a statement of whether the objector intends to appear at the Final Approval Hearing, with or without counsel.

30. Any Settlement Class Member who fails to timely file a written objection with the Court and/or timely file notice of their intent to appear at the Final Approval Hearing in accordance

with the terms of Paragraphs 28-29 and as detailed in the Long Form Notice, with copies to designated counsel for each of the Parties, shall not be permitted to object to the Settlement, the Case Contribution Awards, and/or the Fee Award at the Final Approval Hearing; shall be foreclosed from seeking any review of the Settlement, the Case Contribution Awards, and/or the Fee Award by appeal or other means; and shall be deemed to have waived their objection(s) and be forever barred from making any such objection(s) in the Action or any other related action or proceeding.

SETTLEMENT ADMINISTRATION

31. The Settlement Administrator shall administer the Settlement and shall act under Class Counsel's supervision and subject to the jurisdiction of the Court. Class Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund, subject to Court approval.

32. The Settlement Administrator shall:
- (a) send Short Form Notice and CAFA Notice to the Potential Settlement Class Members, as described in Paragraphs 17 and 19;
 - (b) establish the Settlement Website, as described in Paragraph 19;
 - (c) serve as Escrow Agent for the Settlement Fund;
 - (d) forward to Class Counsel, with copies to PPU's Counsel, all documents and other materials received in connection with the administration of the Settlement promptly upon receipt;
 - (e) receive requests for exclusion and other requests from the Potential Settlement Class Members and promptly provide a copy of such requests to Class Counsel and

PPU's Counsel upon receipt, including any requests received after the Objection/Exclusion Deadline;

(f) provide (at least) weekly reports to Class Counsel and PPU's Counsel, including without limitation, reports regarding any requests for exclusion received;

(g) make available for inspection by Class Counsel and PPU's Counsel any documentation related to the Settlement submitted to the Settlement Administrator, and any correspondence related to the Settlement sent or received by the Settlement Administrator, at any time upon reasonable notice;

(h) provide reports and other information to the Court as the Court may require; and

(i) undertake other administrative tasks in a rational, responsive, cost effective, and timely manner.

33. The Settlement Administrator shall keep the Class List and all personal information, including the identity and mailing addresses of the Potential Settlement Class Members and Settlement Class Members' Program information, confidential. The Parties agree that this information may not be used for any purpose other than effectuating the terms of the Settlement or the duties or obligations arising hereunder.

34. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Settlement, including all such records as are required by applicable law, in accordance with its normal business practices, which will be made available to Class Counsel and PPU's Counsel upon request. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator.

PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

35. No later than June 30, 2023, in coordination with PPU's Counsel, Class Counsel will move for preliminary approval of the Settlement, provisional certification of the Settlement Class for settlement purposes only, appointment of Named Plaintiffs as Settlement Class Representatives, appointment of Class Counsel as counsel for the Settlement Class, and the scheduling of the Final Approval Hearing. Concurrently with the motion for preliminary approval, Class Counsel shall apply to the Court for, and PPU shall agree to, entry of the proposed Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

36. At the time of the submission of the Settlement to the Court as described above, Class Counsel shall request that the Court hold a Final Approval Hearing, which shall be held no less than seventy-five (75) days after the Short Form Notice is disseminated.

37. After the Short Form Notice is disseminated, and no later than ten (10) days before the Final Approval Hearing, Class Counsel, in coordination with PPU's Counsel, shall request and seek to obtain from the Court a Final Judgment which will, among other things:

(a) approve the Settlement as fair, reasonable, and adequate to the Settlement Class, and direct consummation of the Settlement in accordance with the terms and provisions of the Settlement;

(b) fully and finally dismiss the Action with prejudice, and without costs (except as may be provided herein) to any Party as against any other;

(c) incorporate the releases set forth above in Paragraphs 10-14, make the releases effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

(d) approve the manner of distribution of the Net Settlement Fund and order that payments be made to Settlement Class Members only in accordance with same;

(e) award Class Counsel from out of the Settlement Fund such Fee Award and Litigation Expenses as the Court may allow;

(f) award the Settlement Class Representatives from out of the Settlement Fund such Case Contribution Awards as the Court may allow; and

(g) reserve jurisdiction over: (i) implementation of the Settlement and any distribution to Settlement Class Members, pursuant to further orders of the Court; (ii) disposition of the Settlement Fund; (iii) the Action, until each and every act agreed to be performed pursuant to the Settlement shall have been performed, pursuant to further orders of the Court; and (iv) the Parties, for the purpose of enforcing and administering the Settlement.

SETTLEMENT CONSIDERATION

38. The Settlement Amount shall be the sum of \$1,250,000.00. Within ten (10) business days after the Court enters the Preliminary Approval Order, PPU shall deposit into an escrow account established by the Settlement Administrator / Escrow Agent (the “Escrow Account”), the sum of \$1,250,000.00. No person or entity shall be liable to pay any amount pursuant to the Settlement except as set forth in this paragraph.

USE OF SETTLEMENT FUND

39. The Settlement Fund shall be used to pay: (a) any Administrative Expenses incurred in accordance with Paragraph 1(b); (b) any Fee Award and Litigation Expenses granted by the Court; and (c) any Case Contribution Awards granted by the Court. The remaining funds, the Net Settlement Fund, shall be distributed to Settlement Class Members according to the Settlement.

40. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed as provided in Paragraphs 4–9.

41. Up until the Effective Date, the Escrow Account shall be under the control of the Escrow Agent, on behalf of the Settlement Class Representatives, the Settlement Class, and PPU. The Escrow Agent shall cause the Settlement Fund to be invested exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments), except that any cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. The Escrow Agent shall cause all interest on the Escrow Account to be collected and reinvested. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. The Released PPU Parties shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund.

42. The Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury

Regulation § 1.468B-2(k)) for the Settlement Fund. The Settlement Administrator shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released PPU Parties shall not have any liability or responsibility for any such Taxes. Upon written request, PPU will provide to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

43. All Taxes shall be paid out of the Settlement Fund and shall be timely paid pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released PPU Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator with respect to the payment of Taxes.

44. This Settlement is not a claims-made settlement. As of the Effective Date, all rights of PPU in or to the Settlement Fund shall be extinguished.

45. Prior to the Effective Date, no disbursements shall be made out of the Settlement Fund except: (a) upon order of the Court; or (b) as provided in the Settlement. Prior to the Effective Date, the Escrow Agent may pay from the Settlement Fund Administrative Expenses actually

incurred and paid or payable, which shall not exceed \$150,000. If, prior to the Effective Date, Administrative Expenses exceed \$150,000, such additional amounts shall be paid only after approval by both Class Counsel and PPU's Counsel, which shall not be unreasonably withheld. After the Effective Date, the Escrow Agent may pay from the Settlement Fund any additional, unpaid Administrative Expenses only after approval by both Class Counsel and PPU's Counsel. The Released PPU Parties are not responsible for, and shall not be liable for, any Administrative Expenses.

46. If the Effective Date does not occur, or if the Settlement is voided, terminated, or cancelled pursuant to the terms of the Settlement, the Settlement Class Representatives and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have been paid or incurred in accordance with Paragraph 1(b). Any amounts remaining in the Settlement Fund after payment of Administrative Expenses incurred in accordance with Paragraph 1(b), including all interest earned on the Settlement Fund net of any Taxes, shall be returned to PPU. No other person or entity shall have any further claim whatsoever to such amounts.

47. The Net Settlement Fund will be distributed in the manner set forth in Paragraphs 4–9. The manner of distribution of the Net Settlement Fund, as described in Paragraphs 4–8, the treatment of Uncashed Settlement Checks, as described in Paragraph 9, and the identity of the Settlement Administrator, as described in Paragraph 1(z), are not necessary terms of the Settlement, and it is not a condition of the Settlement that any particular manner of distribution of the Net Settlement Fund be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court's or any appellate court's ruling with respect to the manner of distribution of the Net Settlement Fund or any other plan of distribution in this Action. Any order or proceeding relating to the manner of distribution

of the Net Settlement Fund or any other plan of distribution in this Action, or any appeal from any such order, shall not operate to terminate or cancel the Settlement.

48. Payment pursuant to the Final Judgment shall be final and conclusive against all Settlement Class Members. All Settlement Class Members who have not opted out of the Settlement Class shall be bound by all terms of the Settlement, including the Final Judgment to be entered in this Action, and will be permanently barred and enjoined from bringing any action against the Released PPU Parties with respect to any and all of the Released Claims.

49. No person or entity shall have any claim or cause of action against the Settlement Class Representatives, Class Counsel, the Settlement Administrator, or any other agent designated by Class Counsel arising from distributions made substantially in accordance with the Settlement, the manner of distribution of the Net Settlement Fund as approved by the Court, or any order of the Court.

50. The Released PPU Parties shall have no responsibility for, interest in, or liability whatsoever with respect to distribution of the Net Settlement Fund, the payment or withholding of Taxes, the Escrow Account, the Escrow Agent, the Settlement Administrator, Administrative Expenses, or any losses incurred in connection with the foregoing. No person, including the Settlement Class Representatives, Settlement Class Members, and Class Counsel, shall have any claim of any kind against the Released PPU Parties with respect to the matters set forth in this paragraph.

**AWARDS FOR ATTORNEYS' FEES AND SETTLEMENT CLASS
REPRESENTATIVES**

51. Settlement Class Representatives may seek, and the Court may award, reasonable Case Contribution Awards to them for their service in the case not to exceed Five Thousand Dollars (\$5,000) each, which shall come from the Settlement Fund. This shall be in addition to any

Settlement Benefit that Settlement Class Representatives may receive as Settlement Class Members. If the Court approves a request for Case Contribution Awards, the Settlement Administrator will distribute the Case Contribution Awards to the Settlement Class Representatives along with their Settlement Benefit no later than sixty (60) days after the Effective Date.

52. No later than fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will apply to the Court for a Fee Award to Class Counsel to be paid from (and out of) the Settlement Fund and not to exceed thirty-five percent (35%) of the Settlement Fund. In addition to the Fee Award, Class Counsel also will apply to the Court for reimbursement of their Litigation Expenses, which may include a request for reimbursement of the Settlement Class Representatives' costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund. PPU's Counsel does not and will not oppose such a request.

53. Any Fee Award and Litigation Expenses shall be paid to Class Counsel from out of the Settlement Fund upon request after entry of an order by the Court awarding such Fee Award and Litigation Expenses. In the event that there is no Effective Date or the Settlement is terminated pursuant to the terms of the Settlement, Class Counsel shall repay to PPU the full amount of the Fee Award and Litigation Expenses paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event that the Fee Award or award of Litigation Expenses is vacated, modified, reversed, or rendered void as the result of any appeal, further proceedings on remand, or successful collateral attack, Class Counsel shall repay to the Settlement Fund the amount of the Fee Award and/or Litigation Expenses reversed, vacated, or modified, including any accrued interest. Class Counsel shall make the appropriate refund or repayment in full no later than twenty-

one (21) days after: (a) receiving from PPU's Counsel notice of the termination of the Settlement; or (b) any order reversing or modifying the Final Judgment, vacating the Final Judgment, or reducing or reversing the Fee Award or Litigation Expenses has become Final.

54. The granting by the Court of any Case Contribution Award, Fee Award, or Litigation Expenses is not a necessary term of the Settlement, and it is not a condition of the Settlement that any particular Case Contribution Award, Fee Award, or Litigation Expenses be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to any Case Contribution Award, Fee Award, or Litigation Expenses. Any order or proceeding relating to any Case Contribution Award, Fee Award, or Litigation Expenses, or any appeal from any such order, shall not operate to terminate or cancel the Settlement. However, distribution of all or a portion of the Settlement Fund may be delayed in the event of an appeal concerning any Case Contribution Award, Fee Award or Litigation Expenses.

NO ADMISSION OF WRONGDOING

55. Neither the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, is, may be construed as, or may be used as an admission by or against PPU of any fault, wrongdoing, or liability whatsoever.

56. Pursuant to Federal Rule of Evidence 408, entering into or carrying out the Settlement, the exhibits hereto, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by PPU, and shall not be offered or received into evidence in any action or proceeding against the Released PPU Parties in any court or before any administrative agency or other tribunal for any purpose

whatsoever, other than to enforce the provisions of the Settlement or the provisions of any related agreement or exhibit hereto.

TERMINATION OF SETTLEMENT

57. PPU or the Class Representatives on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an alternate judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

58. The Parties agree that, if the number of persons who properly execute and file a timely request for exclusion from the Settlement reaches five (5) percent of the Potential Settlement Class Members, PPU has the unilateral right, in its sole discretion, to declare the Settlement void in its entirety upon notice to Class Counsel.

(a) Class Counsel shall promptly, and in any event not less than twenty-five (25) days prior to the Final Approval Hearing, notify PPU’s counsel of all requests for exclusion submitted by Potential Settlement Class Members and provide PPU’s counsel with copies of any such requests for exclusion.

(b) If PPU intends to exercise its unilateral right of termination set forth herein, written notice of such intent must be provided to Class Counsel at least twenty-one (21) days prior

to the Final Approval Hearing. Within seven (7) days of such notice, Class Counsel and PPU's Counsel shall meet and confer concerning the potential termination of the Settlement.

(c) Following the meet and confer, and at least seven (7) days prior to the Final Approval Hearing, PPU shall provide Class Counsel with written notice that PPU is exercising its unilateral right of termination set forth herein. PPU may withdraw its termination by providing written notice of such withdrawal to Class Counsel no later than one (1) business day prior to the scheduled Final Approval Hearing.

(d) If PPU elects to terminate the Settlement in accordance with the terms set forth herein, the Settlement shall be deemed terminated and cancelled and the provisions of Paragraph 59 shall apply.

59. If (i) PPU exercises its right to terminate the Settlement as provided in Paragraph 58; (ii) the Court disapproves the Settlement; or (iii) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement shall be cancelled and terminated;

(b) The terms and provisions of the Settlement shall have no further force and effect whatsoever;

(c) Class Counsel shall repay to PPU any Fee Award and/or Litigation Expenses paid to Class Counsel from the Settlement Fund, including any accrued interest, within twenty-one (21) days after: (1) receiving from PPU's Counsel notice of the termination of the Settlement; or (2) any order reversing or vacating the Final Judgment;

(d) Within ten (10) business days after written notice is sent by PPU or its counsel to the Escrow Agent and Class Counsel, the Escrow Agent shall cause the Settlement Fund and all interest earned thereon (subject to the expiration of any time deposit not to exceed ninety

(90) days to be refunded to PPU, less any Administrative Expenses paid or incurred in accordance with the terms of the Settlement; and

(e) The Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of the Settlement, and they shall proceed in all respects as if the Settlement, its exhibits, and any related agreements or orders, had never been executed. In such event, the Parties jointly will seek to vacate any orders entered or actions taken in connection with the Settlement.

MISCELLANEOUS PROVISIONS

60. The Settlement will be executed by Class Counsel and PPU's Counsel on behalf of the Parties. All counsel executing the Settlement represent and warrant that they are authorized and empowered to execute the Settlement on behalf of their clients, and that the signature of such counsel is intended to and does legally bind the clients of such counsel.

61. Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement to effectuate its terms. Class Counsel also are authorized to enter into any modifications or amendments to the Settlement on behalf of the Settlement Class which such counsel deem appropriate.

62. All of the exhibits attached hereto are hereby incorporated by this reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of the Settlement and the terms of any exhibit attached hereto, the terms of the Settlement shall prevail.

63. The Settlement may be amended or modified only by a written instrument signed by or on behalf of the Settlement Class Representatives and PPU or their successors-in-

interest, except to the extent that any modification would be inconsistent with any order by the Court.

64. The waiver by one Party of any breach of the Settlement by any other Party shall not be deemed a waiver, by that Party or by any other Party to the Settlement, of any other prior or subsequent breach of the Settlement.

65. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

66. The Settlement and its exhibits constitute the entire agreement among the Parties hereto, and no other agreements, representations, warranties, or inducements have been made to any Party concerning the Settlement or its exhibits other than those contained and memorialized in such documents.

67. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. Signatures may be originals, or facsimile or pdf copies.

68. The Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties to the Settlement.

69. The construction, interpretation, operation, effect, and validity of the Settlement and the exhibits hereto shall be governed by and interpreted according to the laws of the Commonwealth of Pennsylvania, without regard to conflicts of laws, except to the extent federal law requires that federal law govern.

70. Any action arising under or to enforce the Settlement or any portion thereof, shall be commenced and maintained only in this Court.

71. The Parties and their counsel agree to use their best efforts, and to take all reasonable steps necessary, to obtain the entry of the Final Judgment, and to effectuate the Settlement. Any such actions taken by the Parties, and any actions taken by the Parties to comply with the Settlement, will be in accordance with federal, state, and/or local law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99.

72. If any Party is required to give notice to another Party under the Settlement, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to the Settlement Class
Representatives or Class Counsel: **LYNCH CARPENTER, LLP**
Attn: Gary Lynch
1133 Penn Ave., Floor 5
Pittsburgh, PA 15222
Telephone: (412) 322-9243
Email: gary@lcllp.com

If to PPU: **REED SMITH LLP**
Attn: Jeffrey Weimer
225 Fifth Ave.
Pittsburgh, PA 15222
Telephone: (412) 288-7982
Email: jweimer@reedsmith.com

73. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Representatives, and any other Settlement Class Members, against the Released PPU Parties with respect to the Released Claims. Accordingly, Settlement Class Representatives and their counsel, and PPU and its counsel, agree not to assert in any forum that this Action was brought or defended in bad faith or without a reasonable basis. The Parties agree that the amounts paid and the other terms of the Settlement

were negotiated at arm's length and in good faith by the Parties, and reflect a Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement to be executed, by their duly authorized attorneys, as of the date stated above.

DATED: June 30, 2023

LYNCH CARPENTER, LLP

By: /s/ Gary F. Lynch

Gary F. Lynch

Edward W. Ciolko

Jamisen A. Etzel

Nicholas A. Colella

1133 Penn Ave., Floor 5

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gary@lcllp.com

eciolko@lcllp.com

jamisen@lcllp.com

nickc@lcllp.com

Class Counsel

DATED: June 30, 2023

REED SMITH LLP

By: /s/ Jeffrey M. Weimer

Jeffrey M. Weimer

Mariah H. McGrogan

225 Fifth Avenue, Suite 1200

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*Attorneys for Defendant Point Park
University*