

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

)	
ASHA SMITH and EMMA NEDLEY, individually)	
and on behalf of all others similarly situated,)	Case No. 2:20-cv-02086-TJS
)	
Plaintiffs,)	
)	
v.)	Hon. Timothy J. Savage
)	
)	
UNIVERSITY OF PENNSYLVANIA,)	
)	
Defendant.)	
)	
)	
)	

**JOINT STIPULATION AND [PROPOSED] ORDER
MODIFYING SETTLEMENT ADMINISTRATION DEADLINES**

Pursuant to Local Rule 7.4 and Federal Rule of Civil Procedure 60(b)(1) and (b)(6), Plaintiff Asha Smith, Plaintiff Emma Nedley, and Defendant Trustees of the University of Pennsylvania (“Penn”), through their respective undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on January 18, 2023, this Court granted Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Approval of Manner of Distribution of Net Settlement Fund (Doc. No. 105), *see* Doc. No. 113 (Order);

WHEREAS, the Parties have worked diligently on all settlement administration tasks;

WHEREAS, Penn has identified an administrative error in which 270 students, who fell within the definition of a Potential Settlement Class Member, as defined in Paragraph 1(r) of the Settlement Agreement, were incorrectly classified as being enrolled in a program that was online

at the beginning of the Spring 2020 semester (hereinafter “Additional Potential Settlement Class Members”);

WHEREAS, as a result of this administrative error, the Additional Potential Settlement Class Members were not treated as falling within the definition of Potential Settlement Class Members and, for this reason, the Settlement Administrator was not directed to issue notice of the class action to the Additional Potential Settlement Class Members;

WHEREAS, the Parties propose that, within 10 days after the Court’s approval of this stipulation and entry of the proposed order, the Settlement Administrator shall issue, to the Additional Potential Settlement Class Members, the class notice in the form attached as Exhibit A (hereinafter “Additional Class Notice”);

WHEREAS, attached as Exhibit B is a document comparing the Short Form Class Notice (Doc. No. 97-4) previously approved by the Court (Doc. No. 103) with the proposed Additional Class Notice.

WHEREAS, the Parties propose that the Settlement Administrator issue the Additional Class Notice in a manner substantially the same as set forth in Paragraph 15 of the Preliminary Approval Order, Doc. No. 103, i.e., the Settlement Administrator shall send the Additional Class Notice via e-mail and, if an e-mail address is not provided by Penn to the Settlement Administrator, the Settlement Administrator shall send the Additional Class Notice to the Additional Potential Settlement Class Member’s last known mailing address via U.S. mail;

WHEREAS, the Settlement Administrator has informed the Parties that it estimates that any additional settlement administration costs arising from resolution of the administrative error, including but not limited to issuing class notice to the Additional Potential Settlement Class Members and extending settlement administration deadlines, will not exceed \$7,500.

WHEREAS, the Parties request that the Court set new settlement administration deadlines in which the Additional Potential Settlement Class Members may (i) request to be excluded from the Settlement Class, and/or (ii) submit a written objection to the Settlement,¹ the Service Awards, and/or the Fee Award, as follows:

a. Request for Exclusions: the Parties propose that the Additional Potential Settlement Class Members may request to be excluded from the Settlement Class in a manner substantially consistent with Paragraph 23 of the Preliminary Approval Order, i.e., by mailing a request for exclusion to the Settlement Administrator postmarked no later than thirty (30) days after the issuance of the Additional Notice (the “Amended Objection/Exclusion Deadline”), provided that (1) if there is no legible post mark, the request for exclusion must be received by the Settlement Administrator within fourteen (14) days of the Amended Objection/Exclusion Deadline and (2) the form of any such written request for exclusion must be made substantially in accordance with the requirements set forth in the Additional Notice and Paragraphs 23-27 of the Settlement Agreement;

b. Objections: the Parties propose that any Additional Potential Settlement Class Members may submit a written objection to the Settlement, the Service Awards, and/or the Fee Award in a manner consistent with Paragraph 27 of the Preliminary Approval Order, i.e., by filing written objections with the Clerk of Court by the Amended Objection/Exclusion Deadline and serving copies of the objection on Class Counsel and Penn’s Counsel, provided that the form of any such objection must be made substantially in accordance with the requirements set forth in the Additional Notice and Paragraph 28 of the Preliminary Approval Order;

¹ All terms not defined in this stipulation should be given the meaning set forth in the Settlement Agreement and Final Approval Order. *See* Doc. Nos. 97-1 and 113.

WHEREAS, the Parties request that the deadline for the distribution of the Settlement Benefits be amended as follows: a) if no written objections are filed by an Additional Potential Settlement Class Member with the Clerk of Court by the Amended Objection/Exclusion Deadline, then the Settlement Administrator shall issue the Settlement Benefits within thirty (30) days of the Amended Objection/Exclusion Deadline² and b) if any written objections are filed by an Additional Potential Settlement Class Member with the Clerk of Court by the Amended Objection/Exclusion Deadline, then the Parties shall promptly provide a written response to any such Objection and request that the Court rule on such an objection based on the record provided or schedule a hearing, if the Court prefers to address such objection;

IT IS, on this ____ day of _____ 2023, **ORDERED** that, subject to this Court's approval:

1. Within ten (10) days after the entry of this order, the Settlement Administrator shall issue, to the Additional Potential Settlement Class Members, the Additional Class Notice substantially in the form attached as Exhibit A;
2. The Settlement Administrator shall issue the Additional Class Notice in a manner substantially the same as set forth in Paragraph 15 of the Preliminary Approval Order, Doc. No. 103, i.e., the Settlement Administrator shall send the Additional Class Notice via e-mail and, if an e-mail address is not provided by Penn to the Settlement Administrator, the Settlement Administrator shall send the Additional Class Notice to the Additional Potential Settlement Class Member's last known mailing address via U.S. mail;

² The Settlement Administrator shall also transfer to Penn, by such deadline, the value of the Settlement Benefits that Penn is required to issue directly to Continuing Students.

3. The Additional Potential Settlement Class Members may request to be excluded from the Settlement Class in a manner substantially consistent with Paragraph 23 of the Preliminary Approval Order, i.e., by mailing a request for exclusion to the Settlement Administrator postmarked no later than thirty (30) days after the issuance of the Additional Notice (the “Amended Objection/Exclusion Deadline”), provided that (1) if there is no legible post mark, the request for exclusion must be received by the Settlement Administrator within fourteen (14) days of the Amended Objection/Exclusion Deadline and (2) the form of any such written request for exclusion must be made substantially in accordance with the requirements set forth in the Additional Notice and Paragraphs 23-27 of the Settlement Agreement;
4. Any Additional Potential Settlement Class Members may submit a written objection to the Settlement, the Service Awards, and/or the Fee Award in a manner consistent with Paragraph 27 of the Preliminary Approval Order, i.e., by filing written objections with the Clerk of Court by the Amended Objection/Exclusion Deadline and serving copies of the objection on Class Counsel and Penn’s Counsel, provided that the form of any such objection must be made substantially in accordance with the requirements set forth in the Additional Notice and Paragraph 28 of the Preliminary Approval Order; and
5. The deadline for the distribution of the Settlement Benefits is hereby amended as follows: a) if no written objections are filed by an Additional Potential Settlement Class Member with the Clerk of Court by the Amended Objection/Exclusion Deadline, then the Parties shall so inform the Court and the Settlement Administrator shall issue the Settlement Benefits within thirty (30) days of the Amended

Objection/Exclusion Deadline³ and b) if any written objections are filed by an Additional Potential Settlement Class Member with the Clerk of Court by the Amended Objection/Exclusion Deadline, then the deadline for the distribution of the Settlement Benefits is hereby stayed and the Court will rule on such Objection(s) after the receipt of the Parties' response to the Objection(s), or, if necessary, schedule a Hearing.

6. Defendant shall reimburse the Settlement Administrator for any additional settlement administration costs reasonably incurred by the Settlement Administrator arising from the resolution of the administrative error, including but not limited to the costs of issuing notice of the class action to the Additional Potential Settlement Class Members and extending settlement administration deadlines.

Dated: July 14, 2023

Respectfully submitted,

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³ The Settlement Administrator shall also transfer to Penn, by such deadline, the value of the Settlement Benefits that Penn is required to issue directly to Continuing Students.

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*Counsel for Defendant Trustees of the
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APPROVED AND SO ORDERED:

The Hon. Timothy J. Savage
United States District Judge

EXHIBIT A

Subject: NOTICE OF CLASS ACTION SETTLEMENT

Notice ID: <<Notice ID>>

PLEASE READ THIS NOTICE CAREFULLY. If you were enrolled in any program at the University of Pennsylvania (“Penn” or “University”) after March 17, 2020, and were assessed fees by Penn for the Spring 2020 semester, you may be eligible to receive a payment as part of the settlement of *Asha Smith and Emma Nedley, on behalf of themselves and all others similarly situated v. University of Pennsylvania*, Civil Action No. 20-2086 (E.D. Pa.) (the “Action”).

In this Action, Plaintiffs alleged Penn breached a contract with enrolled students when it transitioned to remote learning in response to the COVID-19 pandemic. Plaintiffs also alleged that Penn’s shift to remote learning gave rise to claims of unjust enrichment and conversion. Plaintiffs sought a refund of a portion of their tuition and fees for the Spring 2020 semester. The Court dismissed the tuition-based claims for breach of contract, unjust enrichment, and conversion, and it dismissed the fee-based claims for unjust enrichment and conversion. The sole remaining claim in this Action was Plaintiffs’ fee-based breach of contract claim. Penn denied all allegations of wrongdoing and there has been no finding of liability in any court. However, considering the interest of both Penn and its students in prompt resolution of the matter, Penn and Plaintiffs have agreed that Penn will pay \$4,500,000 into a Settlement Fund to resolve the Action.

Am I a Class Member? If you were enrolled in any Penn program after March 17, 2020, were assessed fees for the Spring 2020 semester, and you were not enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program, then **you are part of the proposed settlement class (a “Settlement Class Member”).** **If you are a Settlement Class Member, you do not have to do anything to participate in and receive the benefits of the Settlement.**

How Do I Get a Payment? If you will have at least one full semester to complete in your respective program after the spring 2023 semester (i.e., you are a “Continuing Penn Student”), your payment will be issued automatically as a credit to your Penn Student Account. If you are not a Continuing Penn Student, your payment will be sent automatically by first class U.S. Mail to your last known mailing address on file with the University Registrar. Settlement Class Members who are not considered a Continuing Penn Student include, but are not limited to, the following: (a) an undergraduate student classified as “Class of 2023”; (b) a student enrolled in the last semester of their program during the spring 2023 semester; (c) a PhD student who has been enrolled in their program for five (5) years or more; (d) a student whose estimated program completion date is not apparent from the records of Penn’s Office of the University Registrar; and (e) a former student. Class Members who will not be Continuing Penn Students may visit the Settlement Website at www.upennrefundsettlement.com to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These actions must be taken by [date that is 45 days after the issuance of this notice].

By participating in the Settlement, you release your right to bring any claim covered by the Settlement, including bringing any claim related to Penn’s transition to remote learning in the Spring 2020 semester, or joining any other action against Penn related to Penn’s transition to remote learning in the Spring 2020 semester.

What Are My Other Options? If you do not want to participate in this Settlement—meaning you do not want to receive the Settlement Benefit, and you do not want to be bound by any judgment entered in this case—you may exclude yourself by mailing a signed opt out request to the Settlement Administrator, which must be postmarked no later than [date that is 30 days after issuance of this notice] (if there is no legible postmark, the request for exclusion must be received by the Settlement Administration on or before [date that is 44 days after issuance of this notice]). If you instead want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by filing an objection with the Clerk of Court and mailing copies to Penn’s counsel and Class Counsel no later than [date that is 30 days after issuance of this notice]. Please follow the detailed instructions outlined in the Long Form Notice and the Settlement Agreement, which can both be found at www.upenncovidrefundsettlement.com, to properly opt-out from, or object to, the Settlement.

Why Am I Receiving This Now? Other Settlement Class Members received notice beginning on November 4, 2022. Due to an administrative error, the Settlement Administrator was not asked to issue notice to you until now.

What Happens Next? On January 18, 2023, the Court approved the Settlement. However, since you are not receiving this notice until now, the Court has extended the deadlines applicable to you—including the deadlines that are listed on the Settlement Website—so that you still have an opportunity to object and/or exclude yourself. You may submit an objection that requests that the Court reconsider its approval of the Settlement and/or payment from the Settlement Fund of: (1) awards to each Settlement Class Representative for their service in this litigation; and (2) Class Counsel’s requested attorneys’ fees, which must not exceed one-third of the Settlement Fund, and reimbursement for litigation costs. These costs and expenses are posted on the Settlement Website.

You are encouraged to review the Long Form Notice. To review the Long Form Notice, review other important documents, including the Settlement Agreement, and obtain more information about the Settlement, please visit www.upenncovidrefundsettlement.com.

If you have any questions, you can contact Class Counsel: Edward W. Ciolko at Lynch Carpenter, LLP, (412) 322-9243 or Paul Doolittle at Poulin | Willey | Anastopoulo, LLC, (843) 310-6210.

You can also contact the Settlement Administrator by calling toll-free 1-877-388-1717, or by emailing info@upenncovidrefundsettlement.com