

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

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.)

ATTENTION: ALL STUDENTS ENROLLED IN ANY PROGRAM AT THE UNIVERSITY OF PENNSYLVANIA AFTER MARCH 17, 2020, WHO WERE ASSESSED FEES FOR THE SPRING 2020 SEMESTER

The United States District Court for the Eastern District of Pennsylvania has authorized this notice. It is not a solicitation from a lawyer. You are not being sued. If you have received a notice of this lawsuit in the mail or by e-mail, you have been identified as a person who is or may be a member of the settlement class in this lawsuit, and the proposed settlement of this lawsuit, if approved, may affect your legal rights. You should read this notice carefully.

If you were enrolled as a student in any program at the University of Pennsylvania (“Penn” or “University”) 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, you are part of the proposed settlement class (a “Settlement Class Member”) affected by this lawsuit.

The purpose of this notice is to inform you of a proposed Settlement relating to a class action lawsuit brought by Plaintiffs, students at Penn during the Spring 2020 semester, against Penn, on behalf of a putative class who paid tuition and fees for the Spring 2020 semester. The case is captioned *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 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 partial refund 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 is Plaintiffs’ fee-based breach-of-contract claim. Penn denies 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 has agreed to establish a Settlement Fund to resolve the Action.

The terms of the agreement are set forth in the proposed Settlement that must be approved by the United States District Court for the Eastern District of Pennsylvania. This notice includes information about the proposed Settlement, a final approval hearing scheduled by the Court, and the process for being heard by the Court.

**SUMMARY OF THE OPTIONS AND THE LEGAL EFFECT OF
EACH OPTION FOR SETTLEMENT CLASS MEMBERS**

YOUR OPTIONS	INSTRUCTIONS	DUE DATE
<p style="text-align: center;">DO NOTHING AND AUTOMATICALLY RECEIVE A PAYMENT</p>	<p>If you will have at least one full semester to complete in your respective program as of sixty (60) days after the Effective Date of the Settlement (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 <u>not</u> a Continuing Penn Student (as described in Answer 7) and you do nothing, your payment will be sent automatically by First Class U.S. Mail to your last known mailing address on file with the University Registrar. For the Settlement Class Members who will not be Continuing Penn Students, such Settlement Class Members may visit the Settlement Website at www.upennCOVIDrefundsettlement.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.</p>	<p>See Answer 7.</p>
<p style="text-align: center;">EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT</p>	<p>You can choose to “opt out” of the proposed Settlement. Opting out means that you choose not to participate in the proposed Settlement. It also means that you cannot object to the proposed Settlement (see below). If you opt out, you will not receive a payment and you will keep any individual claims you may have against Penn relating to the transition to remote learning in the Spring 2020 semester. For more detailed opt-out instructions, see Answer 11 below.</p>	<p>Postmarked no later than December 19, 2022 (If there is no legible postmark, the request for exclusion must be received by the Settlement Administration on or before January 2, 2023).</p>
<p style="text-align: center;">OBJECT TO THE PROPOSED SETTLEMENT</p>	<p>You can file an objection with the Court explaining why you believe the Court should reject the proposed Settlement. If your objection is overruled by the Court and the proposed Settlement is approved, then you would be included in the Settlement Class. If the Court agrees with your objection, then the proposed Settlement may not be approved. If you choose to object, you may not also opt out</p>	<p>Postmarked no later than December 19, 2022.</p>

	of the proposed Settlement, as only participating Settlement Class Members may object to a proposed Settlement. For more detailed objection instructions, see Answer 12 below.	
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These rights and options—and the deadlines to exercise them—along with the material terms of the proposed Settlement are explained further below in this notice.

BASIC INFORMATION

1. What is this lawsuit about?

The consolidated class action being settled is captioned *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.). This case is a putative class action, meaning that the Settlement Class Representatives—Asha Smith and Emma Nedley—brought this action as individuals acting on behalf of a putative class of all people who paid tuition and/or fees for the Spring 2020 semester at Penn. The Settlement Class Representatives alleged claims for breach of contract, unjust enrichment, and conversion. On April 20, 2021, the Honorable Timothy J. Savage, U.S. District Court Judge for the U.S. District Court for the Eastern District of Pennsylvania, dismissed all claims except Plaintiffs’ breach of contract claim with respect to fees for the portion of the Spring 2020 semester when Penn was forced to transition to remote learning due to the COVID-19 pandemic. After this decision by the Court, as well as substantial class discovery, class certification briefing, motion for summary judgment briefing, and the involvement of a mediator (who is a former U.S. Magistrate Judge), the Parties came to the proposed Settlement.

2. Why did I receive notice of this lawsuit?

If you received notice of this lawsuit, it is because Penn’s records indicate that you were enrolled at the University during the Spring 2020 semester and were assessed fees that are the subject of this Action. The Court directed that this notice be made available to all Potential Settlement Class Members because each member has a right to notice of the proposed Settlement and the options available to them before the Court decides whether to approve the proposed Settlement.

3. How do I know if I am part of the Settlement Class?

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 potentially qualify as a Settlement Class Member.

4. Why did the Parties Settle?

In any lawsuit, there are risks and potential benefits that come with litigating as compared to settling. It is the Settlement Class Representatives' and their lawyers' ("Class Counsel") job to identify when a proposed Settlement offer is sufficient and justifies settling the case instead of continuing to litigate. In a class action, Class Counsel determines when to recommend settling to the Class Representatives. The Class Representatives then have a duty to act in the best interests of the class as a whole when deciding whether to accept this recommendation. In this case, it is the belief of the Settlement Class Representatives and Class Counsel that this proposed Settlement is in the best interest of all Settlement Class Members.

Penn denies the claims asserted and believes that its actions were proper and in accordance with the terms of its policies, agreements, and applicable law. Penn denies that its actions give rise to any claim by the Settlement Class Representatives or any Settlement Class Members. However, given the benefit that current and former students will receive from a negotiated settlement, Penn considers it desirable to resolve the Action.

5. What must happen for the proposed Settlement to be approved?

The Court must decide that the proposed Settlement is fair, reasonable, and adequate before it will approve the proposed Settlement. At this time, the Court has already reviewed and decided to grant preliminary approval of the proposed Settlement, after which notice was disseminated to Potential Settlement Class Members. The Court will make a final decision regarding the proposed Settlement at a Final Approval Hearing, which is currently scheduled for January 17, 2023, at 9:00 a.m.

YOUR OPTIONS

6. What options do I have with respect to the proposed Settlement?

If you are a Potential Settlement Class Member, you have three options with respect to this proposed Settlement: (1) do nothing and be eligible to participate in the proposed Settlement and receive the Settlement Benefit allocated to you according to the terms of the proposed Settlement; (2) opt out of the proposed Settlement; or (3) participate in the proposed Settlement, but object to it. Each of these options is described further below.

7. What are the details and deadlines related to my options?

- a. If you do nothing, and the proposed Settlement is approved by the Court, you will be eligible to participate in the proposed Settlement and to receive the Settlement Benefit allocated to you according to the terms of the proposed Settlement.
 - If you will have at least one full semester to complete in your respective program as of sixty (60) days after the Effective Date of the Settlement (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 as of sixty (60) days after the Effective Date of the Settlement; (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 Penn Student. Class Members who will not be Continuing Penn Students may visit the Settlement Website at www.upenncovidrefundsettlement.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 no later than sixty (60) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing currently scheduled for January 17, 2023, at 9:00 a.m.

- b. If you would like to opt out or object to the proposed Settlement, your request must be postmarked no later than December 19, 2022.

8. How do I decide which option to choose?

If you would prefer not to participate in the proposed Settlement, then you may want to consider opting out. If you opt out, you will not receive a payment and you will keep any individual claims you may have against Penn relating to the transition to remote learning in the Spring 2020 semester.

If you believe the proposed Settlement is unreasonable, unfair, or inadequate and that the Court should reject the proposed Settlement, you may want to consider objecting to the proposed Settlement. The Court will decide if your objection is valid. If the Court agrees, then the proposed Settlement may not be approved. If your objection (or any other objection) is overruled, and the proposed Settlement is approved, then you will still receive a payment under the proposed Settlement and you will be bound by the proposed Settlement. Note that if you do not object to the proposed Settlement, and the proposed Settlement is later approved, you cannot appeal that approval order.

9. Do I have to do anything if I want to participate in the proposed Settlement?

No. If you are a Settlement Class Member, you are automatically entitled to a payment. If 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, you are also automatically entitled payment, however your payment will be sent by First Class U.S. Mail to your last known mailing address on file with the University Registrar—unless you visit the Settlement Website at www.upennCOVIDrefundsettlement.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 no later than sixty (60) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing currently scheduled for January 17, 2023, at 9:00 a.m.

OPTING OUT OF THE PROPOSED SETTLEMENT

10. What happens if I opt out of the proposed Settlement?

If you opt out of the proposed Settlement, you will preserve any claims you may have against Penn related to Penn’s transition to remote learning in the Spring 2020 semester. However, you will not be entitled to receive a payment from this proposed Settlement—assuming that the proposed Settlement is approved by the Court.

11. How do I opt out of the proposed Settlement?

To opt out of the proposed Settlement, you must send a written request to the Settlement Administrator at: University Covid Refund Settlement, c/o A.B. Data Ltd., P.O. Box 170500, Milwaukee, WI 53217, which must:

- a. include a statement requesting to opt out of the Settlement Class;
- b. be personally signed by you;
- c. include your name, address, and either a telephone number or email address;
- d. include the caption for the Action—*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.); and
- e. be postmarked no later than December 19, 2022.

A request to opt out of the proposed Settlement that does not meet the above requirements, or that is sent to an address other than that of the Settlement Administrator, will be invalid and the person sending the defective request will remain in the Settlement Class and, if the proposed Settlement is approved by the Court, will receive a payment, and will be bound by the proposed Settlement.

A request to opt out of the proposed Settlement must be done on an individual basis. A Potential Settlement Class Member cannot purport to opt others out of the proposed Settlement on a class or representative basis.

OBJECTING TO THE PROPOSED SETTLEMENT

12. How do I object to the proposed Settlement?

You can object to the proposed Settlement, or any part of it, so long as you do not opt out of the proposed Settlement, as only Settlement Class Members have the right to object to the proposed Settlement, including any attorneys’ fees sought by Class Counsel. To have your objection considered by the Court at the Final Approval Hearing, your objection must:

- a. include your name, address, and either a telephone number or email address; and state that you are a Settlement Class Member;
- b. be personally signed by you, the objecting Settlement Class Member;
- c. contain a statement that includes all objections, states whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and states the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); and
- d. state whether you wish to speak at the Final Approval Hearing, and whether you are represented by counsel.

Your objection and any accompanying papers must be filed with the Clerk of Court. If you are represented by counsel, the objection must be filed through the Court’s electronic case filing (ECF) system. All objections must also be mailed at the same time to Class Counsel, Penn’s Counsel, and the Settlement Administrator at the addresses below. All objections must be postmarked no later than December 19, 2022.

Clerk of Court	Settlement Administrator	Class Counsel	Penn’s Counsel
Clerk of the Court United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse 601 Market Street Philadelphia, PA 19106	University Covid Refund Settlement, c/o A.B. Data Ltd. PO Box 170500, Milwaukee, WI 53217	LYNCH CARPENTER, LLP Attn: Edward W. Ciolko 1133 Penn Avenue, 5th Floor Pittsburgh, PA 15222	HOGAN LOVELLS US LLP Attn: Michael L. Kidney 555 Thirteenth Street NW Washington, D.C. 20004

13. What happens if I object to the proposed Settlement?

If you object to the proposed Settlement, the Court will consider your objection at the Final Approval Hearing. If the Court sustains your objection, or the objection of any other Settlement Class Member, the proposed Settlement may not be approved. If you object, but the Court overrules your objection and any other objections and approves the proposed Settlement, then you will be bound by the proposed Settlement, and you may appeal the approval order to the extent that it overrules your objection.

14. What is the difference between objecting and opting out of the proposed Settlement?

Objecting to the proposed Settlement is telling the Court that you do not believe the proposed Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. If you object to the proposed Settlement and the proposed Settlement is ultimately approved, then you are entitled to a payment and will release any claims related to Penn's transition to remote learning in the Spring 2020 semester. Opting out of the proposed Settlement, however, is telling the Court that you do not want to be a part of the proposed Settlement if it is approved, you do not want to receive a payment, and you will not release claims you might have against Penn that would otherwise have been released by participating in the proposed Settlement.

15. Can I opt out and object to the proposed Settlement?

No. To object to the proposed Settlement, you must participate in the proposed Settlement. Thus, you must choose between opting out or objecting to the proposed Settlement.

THE PROPOSED SETTLEMENT PAYMENT

16. How much is this proposed Settlement?

The Parties have agreed to a Settlement Fund of \$4,500,000.

As discussed in more detail below, attorneys' fees and costs, contribution awards for the Settlement Class Representatives, and administrative fees, including the costs paid to a third-party Settlement Administrator, will be paid out of the Settlement Fund. Thereafter, the remaining funds—the Net Settlement Fund—will be divided among all Settlement Class Members entitled to payments as outlined in the proposed Settlement and discussed further below in Answer 20.

17. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?

Class Counsel will request that the Court approve attorneys' fees of not more than one-third of the Settlement Fund, and will request that Class Counsel be reimbursed for their out-of-pocket litigation costs incurred in litigating the Action. Class Counsel must submit their request to the Court by December 5, 2022, at which point the amount of the requested attorneys' fees, as well as Class Counsel's motion, will be published on the Settlement Website at

www.upennCOVIDrefundsettlement.com. The Court will then decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the Action, the amount of time spent on the case, the magnitude and complexity of the Action, the quality of the work, and the requested fee in relation to the outcome of the Action.

18. How much of the Settlement Fund will be used to pay the Settlement Class Representatives?

Class Counsel will request that the Settlement Class Representatives, Asha Smith and Emma Nedley, be paid an award in the amount of no more than \$10,000 each, in recognition for their work in connection with this case. The award must be approved by the Court.

19. How much of the Settlement Fund will be used to pay administrative expenses?

A third-party Settlement Administrator was retained to provide notice and administer the payments to Settlement Class Members. The expenses of the Settlement Administrator are projected to not exceed \$150,000. In the event that such expenses exceed \$150,000, such additional amounts shall be paid only after approval by both Class Counsel and Penn's Counsel.

20. How much will my payment be?

The balance of the Settlement Fund after paying administrative expenses, attorneys' fees and costs, and awards to the Settlement Class Representatives, will be known as the Net Settlement Fund. The Net Settlement Fund will be divided equally so that each Settlement Class Member receives the same amount. More specifically, the Net Settlement Fund will be allocated *pro rata* to each Settlement Class Member based on the ratio of (a) the total number of Potential Settlement Class Members to (b) the total Net Settlement Fund. The resulting ratio will be multiplied by the Net Settlement Fund to determine each Settlement Class Member's Settlement Benefit. If you qualify as a Settlement Class Member, and the proposed Settlement is approved, you will receive the Settlement Benefit. Should any students opt out of the proposed Settlement, the amount that would have been distributed to such Potential Settlement Class Member had they not filed an opt out request will instead be distributed to Settlement Class Members, in equal amounts to each Settlement Class Member.

21. When will I receive my payment?

The Court will hold a Final Approval Hearing on January 17, 2023 at 9:00 a.m. to consider whether the proposed Settlement should be approved. If the Court approves the proposed Settlement, then payments will be distributed within sixty (60) days of the date after which the proposed Settlement becomes final, as defined in the Settlement Agreement.

THE FINAL APPROVAL HEARING

22. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Final Approval Hearing on January 17, 2023 at 9:00 a.m. at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. At this hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. If objections have been properly submitted, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the awards to the Settlement Class Representatives. The hearing will be public. The hearing may be virtual, in which case the instructions for viewing the hearing and participating will be posted on the Settlement Website at www.upenncovidrefundsettlement.com. The date and time of the Final Approval Hearing may change without further notice. Please check the Settlement Website for updates.

23. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have properly submitted an objection, the Court will consider your objection regardless of whether you attend.

24. May I speak at the Final Approval Hearing?

If you are a Settlement Class Member, you may ask the Court for permission to speak at the Final Approval Hearing. If you are objecting and would like to speak at the Final Approval Hearing, you must state in your objection, as described in Answer 12 above, that you wish to be heard at the Final Approval Hearing.

THE LAWYERS REPRESENTING THE CLASS

25. Do I have a lawyer in this case?

The Court has ordered that Edward W. Ciolko of Lynch Carpenter, LLP; Eric Poulin, Roy T. Willey, IV, and Paul Doolittle of Poulin | Willey | Anastopoulos, LLC; and Stuart A. Carpey of Carpey Law, P.C. will serve as Class Counsel and will represent all Settlement Class Members in this matter.

26. Do I have to pay the lawyers bringing this suit on behalf of the Settlement Class?

No. Class Counsel will be paid directly from the Settlement Fund, subject to the Court's approval.

27. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' fees, which shall not exceed one-third of the Settlement Fund, plus their out-of-pocket litigation costs, and will specify the amount being sought. Class Counsel must submit its request to the Court by December 5, 2022, at which point the amount of the requested attorneys' fees, as well as Class Counsel's motion, will be published on the Settlement Website at www.upenncovidrefundsettlement.com. Settlement Class Members who would like to object to the amount of attorneys' fees sought by Class Counsel may do so by following the instructions described in Answer 12 above.

GETTING MORE INFORMATION

This notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed or obtained online at www.upenncovidrefundsettlement.com. In the event of any inconsistency between the Settlement Agreement and this notice, the Settlement Agreement will govern.

For additional information about the proposed Settlement, you should contact the Settlement Administrator as follows:

University Covid Refund Settlement
c/o A.B. Data Ltd.,
PO Box 170500
Milwaukee, WI 53217

Toll Free: 1-877-388-1717
Email: info@upenncovidrefundsettlement.com

For more information, you may also contact Class Counsel:

LYNCH CARPENTER, LLP

Attn: Edward W. Ciolko
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
(412) 322-9243

POULIN | WILLEY | ANASTOPOULO, LLC

Attn: Paul Doolittle
32 Ann Street
Charleston, SC 29403
(843) 310-6210

**PLEASE DO NOT CONTACT THE COURT OR PENN
CONCERNING THIS NOTICE OR THE PROPOSED SETTLEMENT.**