

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

NATHANIEL POLLEY, *on behalf of himself and all
others similarly situated,*

Plaintiff,

v.

NORTHWESTERN UNIVERSITY,

Defendant.

Case No. 1:20-cv-04798

SURYA VEERAVALLI, *on behalf of herself and all
others similarly situated,*

Plaintiff,

v.

NORTHWESTERN UNIVERSITY,

Defendant.

Case No. 1:20-cv-04892

DANIEL GREENWALD, *on behalf of himself and all
others similarly situated,*

Plaintiff,

v.

NORTHWESTERN UNIVERSITY,

Defendant.

Case No. 1:20-cv-05095

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR CONSOLIDATION AND APPOINTMENT
OF INTERIM CLASS COUNSEL

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INTRODUCTION

There are three related class action lawsuits currently pending before this Court: *Polley et al. v. Northwestern University*, 1:20-cv-04798 (Aug. 14, 2020); *Veeravalli et al. v. Northwestern University*, 1:20-cv-04892 (Aug. 20, 2020); and *Greenwald et al. v. Northwestern University*, 1:20-cv-05095 (Aug. 28, 2020) (collectively, the “Class Actions”). The Class Actions assert the same claims on behalf substantially the same classes of students, are based on the same factual allegations, and are alleged against the same Defendant, Northwestern University. Through the present motion, the Plaintiffs in each action, Nathaniel Polley, Surya Veeravalli, and Daniel Greenwald, jointly seek to have their separate actions consolidated into one action pursuant to Federal Rules of Civil Procedure 42 and appoint interim lead counsel – as agreed upon by the respective Plaintiffs. Accordingly, Plaintiffs hereby move this Court to:

- (1) Consolidate the actions into one proceeding;
- (2) Appoint interim class counsel; and
- (3) Set a schedule for the filing of Plaintiffs’ Consolidated Complaint, and Defendant’s response thereto.

Defendant does not oppose consolidation of the Class Actions and takes no position as to Plaintiffs’ proposed leadership structure.

STATEMENTS OF FACTS

Plaintiff Polley, Plaintiff Veeravalli, and Plaintiff Greenwald essentially assert the same causes of actions – on behalf of the same class of individuals, under the same sets of facts for the same alleged harm caused by Defendant’s actions. *See Exhibits A, B, and C*, the operative complaints respectively. All three actions arise from Northwestern University’s reaction to the Novel Coronavirus 2019 Pandemic (“Covid-19”), including its decision to retain all of the tuition and all of the fees assessed against students like Plaintiffs, even though the University was unable to provide any in-person educational experiences and was completely unable to provide any on-

campus experiences. As alleged, by closing campus and cancelling in-person education and services, and transitioning to an alternative online learning format, Defendant breached its contract with its students, converted their tuition and fees, and was unjustly enriched. *See Ex. A, Polley Compl.* ¶¶ 1-8; *see Ex. B, Veeravalli Compl.* ¶¶ 1-5; *see Ex. C, Greenwald Compl.* ¶¶ 1-2. The Class Actions each purport to represent a materially identical class. *See Polley Compl.* ¶ 39 (“Any person who paid or caused to be paid tuition and/or fees to attend Northwestern University when classes and/or coursework were limited in whole or in part to online attendance as a result or in connection with COVID-19”); *see Veeravalli Compl.* ¶ 40 (“All persons who paid, or will pay, tuition and/or Mandatory Fees for a student to attend in-person class(es) during the Winter 2020, Spring 2020, Summer 2020, Fall 2020, or any other semester affected by Covid-19 at Northwestern but had their class(es) moved to online learning”); *see Greenwald Compl.* ¶ 25 (“all persons who (i) paid tuition to Northwestern University of Illinois for a class or classes (ii) which class was an in-person class, and (iii) did not receive the in-person education for which they paid.”). All three complaints assert claims for breach of contract, *see Polley Compl.* ¶¶47-54; *see Veeravalli Compl.* ¶¶ 50-62; *see Greenwald Compl.* ¶¶ 32-41, and unjust enrichment, *See Polley Compl.* ¶¶ 55-61; *see Veeravalli Compl.* ¶¶ 63-72; *see Greenwald Compl.* ¶¶42-48. The *Veeravalli Compl.* Asserts an additional claim of conversion of property, *see Veeravalli Compl.* ¶¶ 73-80. Finally, the three cases seek the same relief, a refund of tuition and fees reflecting the difference between the actual product received, online instruction and services, as compared to the in-person and on-campus education and services originally paid for. *see Polley Compl.* ¶¶ 8, 54, 61; *see Veeravalli Compl.* ¶¶ 9-10, 62, 80; *see Greenwald Compl.* ¶¶ 41, 48.

Given the substantial overlap in these Class Actions both in facts and in claims – as well as the proposed class they seek to represent, Plaintiffs have agreed, pending approval of the Court,

to consolidate the actions and appoint Plaintiff Polley, Plaintiff Veeravalli, and Plaintiff Greenwald's counsel as interim class counsel to allow this proposed class action to move ahead efficiently.

GOVERNING STANDARD AND RELIEF REQUESTED

I. These Matters Should be Reassigned as Related

Local Rule 40.4(a) states that “[t]wo or more civil cases may be related if one or more of the following conditions are met: (1) the cases involve the same property; (2) the cases involve some of the same issues of fact or law; (3) the cases grow out of the same transaction or occurrence; or (4) in class action suits, one or more of the classes involved in the cases is or are the same.

All of these conditions are met here, as Plaintiffs in all three cases bring the same or similar claims on behalf of the same class of individuals under the same sets of facts for the same alleged harm caused by Defendant's actions. The cases should thus be deemed related.

Local Rule 40.4(b) further provides that where a later-filed case is related to an earlier one, it may be reassigned if (1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding. Again, each of these factors favors reassignment here, and none of the cases, all filed in August 2020, has progressed to a point that would militate against reassignment. *River Vill. W. LLC v. Peoples Gas Light & Coke Co.*, No. 05 C 2103, 2007 WL 541948, at *2 (N.D. Ill. Feb. 14, 2007) (“given the similarities among the three cases, it is clear that substantial judicial resources will be saved if the matters are consolidated. All three cases have essentially the same plaintiffs, identical defendants, the same legal theories, substantially similar factual theories, and involve the same [property]”).

II. Consolidation Is Appropriate and Will Benefit the Court, Parties, and Proposed Class

Consolidation is appropriate where multiple actions before the Court “involve a common question of law or fact.” *See e.g.*, Fed. R. Civ. P. 42; *see also* Manual for Complex Litigation, Fourth, § 11.631, at pp. 121–22 (2004) (the “Manual”). “District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.” *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018); *see also Fugate v. Martin*, 2019 U.S. Dist. LEXIS 79866 (S.D. Ind. May 10, 2019); *Wolfe v. Hobson*, 2018 U.S. Dist. LEXIS 199889 (S.D. Ind. Nov. 26, 2018). “The purpose of consolidation is ‘to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.’” *In re TMI Litig.*, 193 F.3d 613, 724 (3d Cir. 1999) (quoting *In re Prudential Secs. Inc. Ltd. P’ships Litig.*, 158 F.R.D. 562, 571 (S.D.N.Y. 1994)); *see also SanDisc Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d 1060, 1068 (W.D. Wis. Jan. 28, 2008) (“It is within the court’s broad managerial discretion to prevent ‘unnecessary duplication of efforts in related cases’ through consolidation or other means”) (quoting *E.E.O.C. v. G-K-G, Inc.*, 39 F.3d 740, 745 (7th Cir. 1994)).

In determining the propriety of consolidation, this Court must balance “the potential for prejudice, expense, or confusion against the benefits of judicial economy.” *Brown v. House*, No. 2:18-cv-1130, 2019 WL 563585, at * 2 (W.D. Pa. Feb. 12, 2019) (quoting *Easterday v. Federated Mut. Ins. Co.*, No. 14-cv-1415, 2015 WL 1312684, at *2 (E.D. Pa. Mar. 24, 2015)).

That balancing test weighs heavily in favor of consolidation here. There will be no prejudice, increased expense, or risk of confusion because these cases are at their early stages and all parties agree to consolidation. On the other side of the scale, the potential economies and efficiencies to be realized are significant. *Polley*, *Veeravalli*, and *Greenwald* arise from the same facts, purport to represent the same classes, raise the same claims, seek the same relief, and are

subject to the same defenses. *See generally*, *Polley* Compl.; *Veeravalli* Compl.; *Greenwald* Compl. As detailed above, the complaints are materially identical—they allege the same facts and assert common claims. Further, discovery, merits litigation, and class-certification proceedings in these cases are highly likely to overlap. Any documents or testimony potentially relevant to one action would also be relevant to the other. Such repetitive discovery would unduly burden the Court, parties, and witnesses. Consolidation, by contrast, will allow the Court to guide the parties in formulating a comprehensive pretrial discovery plan that would avoid repetitive discovery, reduce litigation costs, minimize inconvenience to parties and witnesses, and allow these cases to proceed most efficiently as a single consolidated action.

Additionally, consolidation is appropriate to ensure that information to the public stems from one litigation – not separate actions, so the interested parties and potential class members can keep apprised of the status¹. Consolidation can help avoid inconsistent decisions and clarify the status of the claims being asserted, especially as the parties anticipate motions to dismiss being a forthcoming component of this case – as it has in other similar cases across the county. *See Salerno v. Fla. S. Coll.*, 2020 WL 5583522 at *4 (M.D. Fla. Sept. 16, 2020) (finding complaint sufficiently alleged “that the College’s publications clearly implied that courses would be conducted in-person.”); *Milanov v. Univ. of Mich.*, Case No. 20-000056-MK, 2020 Mich. Ct. Cl. LEXIS 1, *8-9 (Ct. Cl. July 27, 2020) (“denying the university’s motion to dismiss and noting that the students-

¹ Media coverage of this action has already been widespread, including in coverage by CBS 2 Chicago (available at <https://chicago.cbslocal.com/2020/08/15/grad-student-sues-northwestern-says-students-were-denied-services-they-paid-for-when-classes-went-remote-over-covid-19/>) and The Daily Northwestern (available at <https://dailynorthwestern.com/2020/08/15/campus/recent-grad-sues-nu-for-charging-full-tuition-despite-remote-spring-courses>). Additionally, over 4,930 students have signed an online petition requesting the relief sought in these cases. *See* <https://www.change.org/p/northwestern-university-tuition-fees-reduction-for-spring-2020> (last accessed on Oct. 30, 2020) (noting that “A partial refund of tuition already paid ... would not only more accurately reflect the value of the education received this quarter, but also assist in mitigating the financial stress of the situation for thousands of students ...”).

plaintiffs are “arguing that the university promised one method of instruction, charge tuition and fees commensurate with that method of instruction, yet provided a different (allegedly lesser) method of instruction”); *McDermott v. Ohio State Univ.*, No. 2020-00286JD, 2020 Ohio Misc. LEXIS 127, *5 (Ct. Cl. Aug. 24, 2020) (“Plaintiff’s complaint does not merely assert that the education she received was substandard due to the clinic being closed. Rather, plaintiff alleges that defendant charged a fee specifically to support the dental clinic and then closed the clinic. That is sufficient to assert an unjust enrichment claim.”); *Cross v. Univ. of Toledo*, No. 2020-00274JD, 2020 Ohio Misc. LEXIS 121, *7-8 (Ct. Cl. July 8, 2020) (denying the university’s motion to dismiss unjust enrichment claims); *Waitt v. Kent State Univ.*, 2020-00392JD (Oh. Ct. Cl. Sept. 28, 2020) at *3 (denying motion to dismiss unjust enrichment and breach of contract claims); *Garland v. Western Michigan Univ.*, 20-0063-MK (Mi. Ct. Cl. Sept. 15, 2020) at *7 (denying motion to dismiss contract claims because plaintiff alleged that the agreements at issue were in defendants’ possession); *Smith v. The Ohio State Univ.*, 2020-00321JD (Oh. Ct. Cl. Sept. 9, 2020) at *3 (denying motion to dismiss where “Plaintiff alleges that when she paid tuition to defendant a contract was created and that by holding classes virtually and not refunding a portion of the previously paid tuition and fees, defendant breached said contract”); *Zahn v. Ohio Univ.*, 2020-00371JD (Oh. Ct. Cl. Oct. 19, 2020) (denying motion to dismiss breach of contract claims and unjust enrichment).

III. This Court Should Appoint Plaintiff Polley, Veeravalli, and Greenwald’s Counsel As Co-Lead Interim Class Counsel

The appointment of interim class counsel is recommended early in the litigation, prior to class certification, to protect the interests of the putative class. *See* Fed. R. Civ. P. 23(g); *Annotated Manual for Complex Litigation* (4th ed. 2006) (the “*Manual*”); *see also* Fed. R. Civ. P. 23(g)(2)(A) (providing for the designation of interim class counsel to act on behalf of a putative class before

the determination of class certification). Under Federal Rule of Civil Procedure 23(g)(3), a “court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Although the rule states the court “may” appoint an interim counsel, courts that have construed Rule 23(g)(3) have relied on the Advisory Committee Notes (the “Notes”) accompanying the rule to hold that appointment of interim class counsel is useful because it “clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting necessary discovery, moving for class certification, and negotiating settlement” *Smith v. State Farm Mut. Auto. Ins. Co.*, 301 F.R.D. 284, 288 (N.D. Ill. Jan. 2014); *In re Municipal Derivatives Antitrust Litig.*, 252 F.R.D. 184, 185 (S.D.N.Y. 2008); *Bernstein v. Cengage Learning, Inc.*, 2019 WL 6324276, at *2 (S.D.N.Y. Nov. 26, 2019) (“Establishing interim lead counsel in this action will minimize the risk of duplicative filings and allow the Court to consolidate related filings more efficiently.”). Further, the Notes contemplate “that in many cases the need to progress toward the certification determination may require designation of interim counsel.” Fed. R. Civ. P. 23, Advisory Committee Notes (2003) (emphasis added).

As stated in the *Manual*, the court should “conduct an independent review to ensure that counsel appointed to leading roles are qualified and responsible, that they will fairly and adequately represent all of the parties on their side, and that their charges will be reasonable.” *Manual* at § 10.22. Indeed, the most important factor is “achieving efficiency and economy without jeopardizing fairness to parties.” *Id.* at § 10.221. While neither Rule 23 nor the Notes expressly so state, it is generally accepted that the considerations set out in Rule 23(g)(1), which govern the appointment of class counsel once a class is certified, apply equally to the designation of interim class counsel before certification. *See Walker v. Discover Fin. Servs.*, 2011 U.S. Dist.

LEXIS 58803 (N.D. Ill. May 26, 2011) (“Although neither the federal rules nor the advisory committee notes expressly so state, it appears to be generally accepted that the considerations set out in Rule 23(g)(1)(C), which governs appointment of class counsel once a class is certified, apply equally to the designation of interim class counsel before certification.”); *see also Hill v. The Tribune Co.*, 2005 U.S. Dist. LEXIS 23931 (N.D. Ill. Oct. 13, 2005).

Rule 23(g)(1)(A) provides, in relevant part, that in appointing class counsel the Court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed R. Civ. P. 23(g)(1).

In general, a class is fairly and adequately represented where counsel is qualified, experienced and generally capable of conducting class action litigation. Additionally, courts have “frequently appointed more than one firm to act as interim-lead and/or lead counsel.” *See Walker*, 2005 U.S. Dist. LEXIS, *9 (citing) *Waudby v. Verizon Wireless Servs., LLC*, 248 F.R.D. 173, 177 (D.N.J. 2008) (appointing four firms as interim class counsel); *In re Air Cargo Shipping*, 240 F.R.D. 56, 58-59 (E.D.N.Y. 2006) (appointing four firms as co-lead counsel) Each of these considerations, as detailed below, support the appointment of Francis Mailman Soumilas, P.C. (“Francis Mailman”), The Golan Firm, PLLC (“Golan”), Carlson Lynch, LLP (“Carlson Lynch”), Leeds Brown Law, P.C. (“Leeds Brown”), and Edelman Combs Lattuner & Goodwin, LLC (“Edelman Combs”), as co-lead interim class counsel, with two of the proposed co-lead interim

class counsel with offices in Chicago² to serve as liaison with the Court. In addition, Defendants have consented to the consolidation of the matters and takes no position on the appointment of lead counsel.

ARGUMENT

I. Proposed Co-Lead Interim Class Counsel Has Thoroughly Identified And Investigated The Claims

While no one factor under Federal Rule of Civil Procedure 23(g)(1) “should necessarily be determinative,” Advisory Committee Notes (2003), the investigative and analytical efforts of counsel can be a deciding factor:

In a case with a plaintiff class, the process of drafting the complaint requires some investigatory and analytical effort, tasks that strangers to the action most likely will not have undertaken. All other things being equal, when an attorney has performed these or other investigative and analytical tasks before making the application for appointment, he or she is in a better position to represent the class fairly and adequately than attorneys who did not undertake those tasks.

Moore’s Fed. Prac. § 23.120(3)(a) (3d. Ed. 2007).

Here, Francis Mailman and Golan identified and investigated the claims as asserted in Exhibit A, Leeds Brown and Carlson Lynch performed the same as demonstrated by Exhibit B, and Edelman Combs performed the same as demonstrated by Exhibit C. These complaints demonstrate that Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs have and will continue to fairly and adequately represent the proposed Class. For example, Proposed Co-Lead Interim Class Counsel has performed the following work thus far:

- a) Investigated potential legal claims arising from Defendant’s closure of its campus and failure to provide in-person classes from March 13, 2020 onward;

² Given that Edelman and Carlson have offices located within the District, Plaintiffs believe there is no need for a specific designation of local counsel, as is traditional. Edelman has an office located at 20 S. Clark St, Suite 1500, Chicago, IL 60603 and Carlson has an office at 111 W. Washington St., Suite 1240, Chicago, IL 60602.

- b) Reviewed and analyzed numerous articles describing Defendant's challenged conduct;
- c) Reviewed and analyzed Defendant's website;
- d) Reviewed and analyzed Defendant's policies, student handbooks, and course catalogs;
- e) Reviewed and analyzed Defendant's billing records, and students' payment records, relating to the Spring 2020 semester;
- f) Investigated the nature of the challenged conduct at issue by interviewing numerous Northwestern University students;
- g) Reviewed and analyzed comments and statements by Northwestern University staff related to the challenged conduct at issue;
- h) Investigated the adequacy of the Named Plaintiffs to represent the putative class; and
- i) Drafted and filed the Complaints in the Class Actions.

See Declaration of James A. Francis of Francis Mailman ("Francis Dec."); Declaration of Yvette Golan of Golan ("Golan Dec."); Declaration of Michael A. Tompkins of Leeds Brown ("Tompkins Dec."); Declaration of Edward W. Ciolko of Carlson Lynch ("Ciolko Dec."); and the Declaration of Dan Edelman of Edelman Combs ("Edelman Dec.").

These investigative efforts represent a high standard of professionalism, dedication, and thoroughness, which have been marshaled to identify, develop and demonstrate the claims alleged in the operative complaints. These measures are precisely the type of work that the Advisory Committee Notes to Rule 23 state that the Court should consider in appointing interim class counsel.

The Notes to Rule 23 also contemplate that the appointment of interim class counsel may be necessary to conduct pre-certification discovery prior to a determination to grant or deny class certification pursuant to Fed. R. Civ. P. 23(c)(1), inasmuch as "some discovery is often necessary for that determination." *See* Fed. R. Civ. P. 23, Advisory Committee Notes (2003). Here, a significant amount of discovery and related motion practice is expected to take place prior to class certification. *See id.* (noting that interim class counsel may be necessary to "make or respond to motions before certification"). Discovery in this matter may be complicated, and it may require

meet-and-confers and motion practice prior to class certification. Proposed Co-Lead Interim Class Counsel's thorough investigation into the claims will enable them to efficiently and adequately handle this discovery and related motion practice.

II. Proposed Co-Lead Interim Class Counsel Is Experienced in Handling Class Actions and Other Complex Litigation

The second factor the Court must consider is "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action." Fed. R. Civ. P. 23(g)(1)(A)(ii). Here, Proposed Co-Lead Interim Class Counsel has substantial experience handling class actions and other complex litigation, including successful experience litigating and settling cases on behalf of individuals in the same demographic. Collectively, as well as singularly the firms have deep class action experience, have been certified as class counsel by many federal courts and possess the skill to represent the proposed class in this action. *See Francis Dec.*, *Golan Dec.*, *Tompkins Dec.*, *Ciolko Dec.*, and *Edelman Dec.*

Counsel for Plaintiff Polley, Francis Mailman is one of the nation's premier consumer class firms, with offices in Philadelphia, New York, Chicago and San Francisco. The firm handles all consumer rights matters, and has been certified to serve as class counsel by federal courts throughout the country in over 60 class actions. The firm is in the small minority of class firms to have tried numerous class actions to successful plaintiff's verdicts, including a recent record breaking \$60 million dollar verdict brought under the Fair Credit Reporting Act in June of 2016.

Francis Mailman has been recognized and complimented by numerous federal courts for the high caliber of its work product and its commitment to the classes it represents. *See Barel v. Bank of America*, 255 F.R.D. 393, 398-99 (E.D. Pa. 2009) (finding firm "competent, experienced and well-qualified to prosecute class actions" and noting that class counsel "have done an excellent job in representing the class in the instant litigation."); *White v. Equifax Info. Solutions*, No. 05-

01070, 2014 WL 1716154, at *13, 19, 22 (C.D. Cal. May 1, 2014), *aff'd sub nom. Radcliffe v. Equifax Info. Sol'ns., Inc.*, 818 F.3d 537, 548 (9th Cir. 2016) (appointing firm and its team as interim class counsel over objections from competing national law firm Boies Schiller because their team's "credentials and experience [we]re significantly stronger in class action and FCRA litigation."); *Patel v. Trans Union, LLC*, 308 F.R.D. 292, 307 (N.D. Cal. 2015) (court noting counsel have "extensive experience ... have represented consumer classes in many cases in many districts ... [and] have shown their proficiency in this case[.]"); *Kelly v. Business Information Group*, C.A. 15-6668, 2019 WL 414915 (E.D. Pa. Jan. 31, 2019).

In addition, Francis Mailman has served as counsel to some of the largest consumer class actions in history. *See e.g. Ryals et al. v. Hireright Solutions, Inc.*, C.A. No. 3:09cv625 (E.D. Va. Dec. 22, 2011) (\$28.3 million national settlement achieved for class of consumers subjected to employment background checks); *Henderson v. Acxiom Risk Mitigation, Inc.*, C.A. No. 12-589 (E.D. Va., Aug. 7, 2015) (appointed class counsel in a national consumer class action which obtained a \$20.8 million settlement against one of the largest data sellers); *Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, No. 3:11-cv-754, 2014 WL 4403524, at *11 (E.D. Va. Sept. 5, 2014) (appointed class counsel in national class action that obtained a \$13.5-million-dollar settlement against Lexis/Nexis, along with a groundbreaking injunctive relief settlement on behalf of 200 million Americans in which LexisNexis agreed to bring its Accurint product into Fair Credit Reporting Act compliance). Francis Dec.

Counsel for Plaintiff Nathaniel Polley, Golan is a nationally recognized class action attorney with offices based in Washington, DC, specializing in complex class actions alleging false advertising and related claims. In collaboration with Francis Mailman, Golan has been leading the litigation and investigation of similar lawsuits against schools for inequitable tuition policies

during the COVID-19 pandemic, including *Jonathan Michel v. Yale University*, Case No. 3:20-cv-01080-JCH (D. Conn. July 29, 2020); *Christian Walsh v. Chapman University*, Case No. 8:20-cv-01538-JLS-DFM (C.D. Cal. Aug. 19, 2020); *Anilda Rodrigues v. Boston College*, Case No. 1:20-cv-11662-RWZ (D. Mass. Sept. 8, 2020); *Daniel Carstairs v. University of Rochester*, Case No. 6:20-cv-06690-CJS (W.D.N.Y. Sept. 10, 2020); *Sylvia Jones v. Tulane University et al.*, Case No. 2:20-cv-02505-GGG-MBN (E.D. La. Sept. 14, 2020); and *Haley Martinez and Matthew Sheridan v. University of San Diego*, Case No. 3:20-cv-01946-LAB-WVG (S.D. Cal. Oct. 1, 2020).

As federal courts have recognized, Golan has earned a national reputation for her effective collaboration across law firms and her extensive investigative work, a few examples of which can be found in the allegations regarding Northwestern’s policies and variations in tuition rates based on the format of instruction (online v. in-person). *See, e.g., Buonasera v. Honest Co., Inc.*, 318 F.R.D. 17, 18 (S.D.N.Y. 2016) (appointing Golan as interim co-lead class counsel, remarking the team has “conducted the first and . . . the most exhaustive investigation in the products at issue in this suit”); *In re Honest Mktg. Litig.*, 16-CV-01125, 2017 WL 8780329, at *2 (S.D.N.Y. Dec. 8, 2017) (appointing Golan as co-lead class counsel, describing work as “extremely diligent in pursuing the best possible outcome for the Class”). Golan Dec.

Counsel for Plaintiff Veeravalli, Carlson Lynch is a nationally recognized class action law firm with offices located in Pittsburgh, San Diego, Los Angeles, and Chicago, specializing in an array of complex class actions, including consumer protection, financial fraud, data breach, privacy, labor and employment, antitrust, civil rights, and wage and hour laws. Carlson Lynch has been at the forefront of the “University COVID Refund” cases around the country, in both federal and state courts, as well as specialized courts of claims. The firm is not only handling one of the

most robust sets of related actions of any plaintiff's firm in the nation,³ it has developed a reputation for extensive pre-filing investigation, collaboration with numerous other counsel in quickly privately ordering class counsel, and innovation regarding claim presentation and refining (e.g. expanding class participation beyond the Spring 2020 semester and introduction of "Takings" claims in actions involving certain state schools), and is specifically working with proposed Co-Lead Counsel, Leeds Brown and Sultzer, on a number of analogous actions and investigations across the country. See e.g., *Lafluer v. State University System of Florida*, Case No. 8:20-cv-1665(CEH)TGW (M.D.Fla. Aug. 24, 2020) (asserting claims on behalf of students at the 12 universities within the Florida University System); *Gunter v. Louisiana State University System*, C-69893024 (19th Jud. Dist. Ct, Aug. 3, 2020); *Veeravalli v. Northwestern Univ.*, Case No. 1:20-cv-4892 (N.D. Ill. Aug. 20, 2020); *Miller v. Lewis Univ.*, Case No. 1:20-cv-5473 (N.D. Ill. Sept.

³ Directly analogous filed actions being litigated by Carlson Lynch include: *Ali v. The Texas A&M University System*, S.D. TX. Case No. 4:20-CV-02605 (co-counsel with Leeds Brown Law), *Ryan v. Temple University*, E.D. Pa. Case No. 2:20-CV-02164, *Lafluer v. Florida Board of Governors et al*, M.D. Fla. Case No. 8:20-CV-01665 (co-counsel with Leeds Brown Law), *Gunter v. Louisiana State University, et al*, LA 19th Judicial District Court, Case No. C-698930 (co-counsel with Leeds Brown Law), *Hickey v. University of Pittsburgh*, W.D. Pa. Case No. 2:20-CV-690, *Ramey v. Penn State University*, W.D. Pa. Case No. 2:20-CV-00753, *Rapuluchukwu C Okolo v. Maryville University*, MO 21st Cir. Case No. 20SL-CC02850, *Haynie v. Cornell University*, N.D. N.Y. Case No. 3:20-CV-0467, *Pfingsten, et al v. Carnegie Mellon University*, W.D. Pa. Case No. 2:20-CV-00716, *Zahn v. Ohio University*, Ohio Court of Claims Case No. 2020-00371JD, *Placko et al v. University of Illinois*, N.D. IL. Case No. 1:20-CV-03451, *Waitt v. Kent State University*, Ohio Court of Claims Case No. 2020-00392JD, *Smith v. University of Pennsylvania*, E.D. Pa. Case No. 2:20-cv-02086-TJS, *Loeb v. The Curators of the University of Missouri*, MO 13th Cir. Case No. 20BA-CV02127, *Hannibal-Fisher v. Grand Canyon University*, Dist. Ariz. Case No. 2:20-CV-01007, *Reyes v. The University of Texas at Austin et al*, W.D. Tex. Case No. 6:20-CV-00607, *In re University of Southern California Tuition and Fees COVID-19 Refund Litigation*, C.D. CA. Case No. 2:20-CV-04066, *Minichelli v. Syracuse University*, N.D. N.Y. Case No. 5:20-CV-00839, *Veeravalli v. Northwestern University*, N.D. Ill. No. 1:20-CV-04892, *Felix v. Roosevelt University*, N.D. Ill. No. 1:20-CV-04793, *Utsay v. The California State University System, et al*, C.D. Cal. No. 2:20-CV-06902, *Troia v. North Central College*, N.D. Ill. No. 1:20-CV-05229, *Craig v. Nova Southeastern University*, S.D. Fla. No. 1:20-cv-23818, *Miller v. Lewis University*, N.D. Ill. No. 1:20-cv-05473, *Barry v. University of Washington, et al*, WA King Co. Sup. Ct. No. 20-2-13924-6 SEA, *Ringgold v. Utah System of Higher Education*, D. Utah No. 2:20-CV-0671, *Jimenez, et al v. The Board of Regents of the University of Colorado*, CO Boulder Dist. Ct. No. 2020CV30613, and *Figueroa, et al v. Point Park University*, W.D. Pa. No. 2:20-CV-01484.

15, 2020); among others. Because of its substantial commitment to investigating these claims, Carlson Lynch has been appointed as co-lead interim class counsel in *Temple* and *Carnegie Mellon*.

Gary Lynch is one of the founding partners of Carlson Lynch. Gary Lynch and Carlson Lynch have led several consolidated or MDL class actions, including: *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, MDL 2800 (N.D. Ga.) (Financial Institution Track), in which preliminary approval was granted on June 5, 2020 for a class action settlement providing up to \$5.5 million in direct payments to class members; *In re Home Depot Customer Data Sec. Breach Litig.*, MDL 2583 (N.D. Ga.) (Financial Institution Track), in which the court entered final approval of a class settlement in 2017, providing for approximately \$27.25 million in overall monetary class benefits, excluding attorneys' fees; and *First Choice Federal Credit Union v. The Wendy's Company et al*, 2:16-cv-0506, (W.D. Pa.), where a settlement creating a \$50 million common fund received final approval in 2019. All three of these cases resulted in class settlements which have or will return substantial funds to national plaintiff classes. In *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL 2522 (D. Minn.), Carlson Lynch was appointed to the Plaintiffs' Executive Committee managing the litigation on behalf of *all* Plaintiffs (consumers, financial institution, and shareholders). A settlement agreement providing \$10 million to affected individual consumers was granted final approval in November 2015. A separate settlement providing approximately \$39 million in relief to financial institutions was approved in May 2016. In addition, Carlson Lynch has been appointed to many leadership committee positions in various class actions, the majority of which cases have also ended in favorable settlements, while others are ongoing. *See* Ex. D (Carlson Lynch Firm Resume) and Ex. E (Gary F. Lynch Resume).

Counsel for Plaintiff Veeravalli, Leeds Brown has considerable experience litigating class action lawsuits. *See e.g. Griffin v. Aldi, Inc.* 16-cv-00354-LEK-ATB (N.D.N.Y. Nov. 15, 2018)

(working with The Sultzer Law Group and other firms to obtain final approval of \$9.8 million settlement on behalf of store managers across the nation); *Weinstein v. Jenny Craig Operations, Inc.*, 138 A.D.3d 546 (N.Y. App. Div., 1st Dept. 2016) (upholding certification of employees at Jenny Craig’s branches and locations in New York); *Marcus v. AXA Advisors, LLC*, 11-CV-2339 (SJ)(SMG) (E.D.N.Y.) (granting nationwide conditional certification under the FLSA of over 2,000 financial service workers before approving class wide settlement on Oct. 21, 2015). Leeds Brown has been recognized by courts for their work in the class action context. For example, Judge Alison J. Nathan of the Southern District of New York noted “[Co-counsel] and Leeds Brown Law, P.C. are experienced and well-qualified employment and class action lawyers with expertise in prosecuting and settling labor law cases. The substantial work that Plaintiffs’ counsel has performed in investigating, litigating and reaching a settlement in this case demonstrates their commitment to the class and representing the class’ interests, as well as their general ability to conduct this litigation...As noted above, [co-counsel] and Leeds Brown Law, P.C. have extensive experience in labor law class actions and have devoted considerable time and effort to litigating and settling this action on behalf of the class.” *Tart v. Lions Gate Entm’t Corp.*, 2015 U.S. Dist. LEXIS 139266, *7 (S.D.N.Y. Oct. 13, 2015); *see also Contreras v. Dania Marina, Inc.*, Index No. 54536/2018 (Sup. Ct., Westchester Cty., Comm. Div., [Gretchen Walsh, J.], Oct. 3, 2019) (commending counsel when approving the class-wide settlement and approving Class Counsel’s request for fees by noting “I think everybody was vigorously represented in this action. And I commend counsel for their work as well.”); *Vizcaino v. The Ritz Carlton Hotel Company, LLC*, 2020 N.Y. Misc. LEXIS 2319 (N.Y. Sup. Ct., Suffolk Cty. [O’Brien, Special Master.], May 8, 2020) (approving Leeds Brown Law, P.C.’s request for fees as Class Counsel and noting that “The experience, ability, and reputation of class counsel is widely recognized.”); *Cohan v. Columbia*

Sussex Management, LLC, 2018 U.S. Dist. LEXIS 170192 (E.D.N.Y. Sept. 28, 2018) (“Class counsel [LBL and co-counsel] are well known class action employment lawyers who have extensive experience and special expertise in prosecuting and settling FLSA and NYLL wage and hour cases.”); *Varela v. Building Services Industries, LLC*, Index No. 600037/2016 (N.Y. Sup. Ct. Nassau Cty. June 21, 2018) (“the Court finds that class counsel have established their significant experience prosecuting employment class actions and their work performed in the representing the interests of the class members in this action.”); *Barry v. S.E.B. Serv. of N.Y.*, Case No. 11-cv-5089 (JMA)(MG) (E.D.N.Y. Nov. 12, 2015) (noting that Jeffrey K. Brown, Michael A. Tompkins, and Suzanne Leeds Klein (along with co-counsel) “did substantial work identifying, investigating, and analyzing and settlement Plaintiff’s and the class members’ claims. Class Counsel have significant experience prosecuting and settling employment class actions, including wage and hour class actions. The work that Class Counsel has performed both in litigating and settlement this case demonstrates their commitment to the class and to representing the class’ interests.”).

Leeds Brown has settled class-wide claims asserted by individuals in the same demographic as those in the action here. *See e.g., Mendez v. KCD, Inc.*, Index No. 155702/2015 (N.Y. Sup. Ct. N.Y. Cty. Jan. 4, 2017) (obtaining settlement approval for a group of students or entry-level works in an unpaid internship class action); *Smith v. Fendi N.A., Inc.*, Index No. 151756/2015 (N.Y. Sup. Ct. N.Y. Cty. Oct. 19, 2016) (same); *Grant v. Warner Music Group Corp.*, Case No. 13-CV-4449(PGG) (S.D.N.Y. March 11, 2016); *Vitetta v. Sirius XM Radio Inc.*, Case No. 14-2926(VEC) (S.D.N.Y. Dec. 18, 2015) (same); *Arias v. Clear Channel Broadcasting, Inc.*, Case No. 14-CV-5088(SN) (S.D.N.Y. Feb. 2, 2016) (same); *Tart v. Lions Gate Entm’t Corp.*, 2015 U.S. Dist. LEXIS 139266 (same); among others⁴.

⁴ *See e.g. Fredericks v. Derek Lam International LLC*, Index No. 154922/2015 (N.Y. Sup. Ct. N.Y. Cty. May 30, 2018); *Craparotta v. Ralph Lauren Corporation*, Index No. 153553/2015 (N.Y. Sup. Ct. N.Y. Cty.

Daniel A. Edelman is the founding member of the Chicago class action law firm of Edelman, Combs, Lattuner & Goodwin, LLC. Since its inception, the firm has recovered more than \$500 million for consumers. The firm has handled cases in the areas of collection practice, debtors' rights, Telephone Consumer Protection Act, Fair Credit Reporting Act, class action procedure, landlord-tenant, mortgage charges and servicing practices, bankruptcy, automobile sales and financing practices, and predatory lending practice.

Jenkins v. Heintz, 25 F.3d 536 (7th Cir. 1994), *aff'd* 514 U.S. 291 (1995) is a leading decision regarding the liability of attorneys under the Fair Debt Collection Practices Act. Mr. Edelman argued it before the Supreme Court and Seventh Circuit. *Avila v. Rubin* 84 F.3d 222 (7th Cir. 1996), *aff'g Avila v. Van Ru Credit Corp.*, 94cv3234, 1994 WL 649101, 1994 U.S. Dist. LEXIS 16345 (N.D.Ill., Nov. 14, 1994), later opinion, 1995 WL 22866, 1995 U.S. Dist. LEXIS 461 (N.D.Ill., Jan. 18, 1995), later opinion, 1995 WL 41425, 1995 U.S. Dist. LEXIS 461 (N.D.Ill., Jan. 31, 1995), later opinion, 1995 WL 55255, 1995 U.S. Dist. LEXIS 1502 (N.D.Ill., Feb. 8, 1995), later opinion, 1995 WL 683775, 1995 U.S. Dist. LEXIS 17117 (N.D.Ill., Nov. 16, 1995) and *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002), are leading decisions on phony "attorney letters." *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) (*en banc*), is a leading

May 1, 2018); *Huggins v. Gucci America, Inc.*, Index No. 161446/2014 (N.Y. Sup. Ct. N.Y. Cty. Apr. 30, 2018); *Jailall v. Diesel U.S.A., Inc.*, Index No. 156210/2015 (N.Y. Sup. Ct. N.Y. Cty. Mar. 28, 2018); *Podell v. Alexander Wang Global Retail LLC*, Index No. 600355/2015 (N.Y. Sup. Ct. Nassau Cty. Dec. 19, 2017); *Smith v. The Donna Karan Company LLC*, Index No. 157912/2013 (N.Y. Sup. Ct. N.Y. Cty. Nov. 13, 2017); *Zarembra v. Gilt Groupe, Inc.*, Index No. 151631/2017 (N.Y. Sup. Ct. N.Y. Cty. Oct. 25, 2017); *Lass v. Alice (Plus) Olivia, LLC*, Index No. 150527/2015 (N.Y. Sup. Ct. N.Y. Cty. Oct. 10, 2017); *Warren v. Marc Jacobs International, LLC*, Index No. 160107/2014 (N.Y. Sup. Ct. N.Y. Cty. Sept. 20, 2017); *Kocivar v. Wenner Media LLC*, Index No. 150756/2015 (N.Y. Sup. Ct. N.Y. Cty. Aug. 2, 2017); *Giraud v. Dolce & Gabbana, USA, Inc.*, Index No. 652522/2015 (N.Y. Sup. Ct. N.Y. Cty. Jul. 19, 2017); *Awogbile v. Kenneth Cole Productions, Inc.*, Index No. 161886/2014 (N.Y. Sup. Ct. N.Y. Cty. Jul. 18, 2017); *Carden v. IMG Worldwide, LLC*, Index No. 162501/2014 (N.Y. Sup. Ct. N.Y. Cty. May 30, 2017); *Whitlow v. Burberry Limited*, Index No. 150529/2015 (N.Y. Sup. Ct. N.Y. Cty. Nov. 15, 2016) *O'Jeda v. Viacom*, 13 Civ. 5658 (JMF)(GWG) (S.D.N.Y. Jan. 13, 2016).

decision on the FDCPA venue requirements. *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014), later opinion, 807 F.3d 872 (7th Cir. 2015) is a leading decision on the collection of time-barred debts.

The firm had a leadership role in *Portfolio Recovery Associates, LLC, Telephone Consumer Protection Act Litigation*, MDL No. 2295, and *Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, MDL No. 2286; *In re Mortgage Escrow Deposit Litigation*, M.D.L. 899, 1994 WL 496707, 1994 U.S. Dist. LEXIS 12746 (N.D. Ill., Sept. 9, 1994). *Gordon v. Boden*, 224 Ill. App. 3d 195, 586 N.E.2d 461 (1st Dist. 1991), is the first decision approving "fluid recovery" in an Illinois class action. *Elder v. Coronet Insurance*, 201 Ill. App. 3d 733, 558 N.E.2d 1312 (1st Dist. 1990); held that an insurance company's reliance on lie detectors to process claims was an unfair and deceptive trade practice.

III. Proposed Co-Lead Interim Class Counsel Are Very Familiar with the Applicable Law

Proposed Co-Lead Interim Class Counsel are also knowledgeable about the law applicable to the instant claims, as demonstrated by their experience litigating other class actions. As set forth above, the attorneys of Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs have a track record of successfully litigating and resolving large-scale complex actions. Proposed Co-Lead Interim Class Counsel will ensure their familiarity with the applicable laws and practices of this jurisdiction, as well as this Court's rules and procedures, which will serve to minimize inefficiency in attorney time and litigation costs.

IV. Proposed Co-Lead Interim Class Counsel Will Commit All Necessary Resources to Representing the Class

The final Fed. R. Civ. P. 23(g)(1)(C)(i) factor, which concerns the resources counsel will commit to the case, also strongly supports the appointment of Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs. Francis Mailman, Golan, Leeds Brown, Carlson

Lynch, and Edelman Combs are well-established, successful law firms that have the resources and personnel necessary to pursue a case of this magnitude, as they have demonstrated in numerous similar class actions. As a result, the firms can fully utilize their resources and knowledge of class action practice to the direct benefit of Plaintiffs and the class members. Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs have already demonstrated the will and ability to commit the necessary resources to assure a strong and well-supported case on behalf of members of the proposed class. The firms' resources are not merely financial, but also include substantial expertise and work-product developed in other similar cases which will benefit Plaintiffs and the putative class. Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs' ability to draw from this well-developed repository of information will also allow them to streamline the litigation.

As interim class counsel, Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs will continue to commit the same resources and effort to this case as they have committed to their other, successful class action litigations. Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs have already established a team of attorneys to litigate this matter, ensuring the most organized and efficient representation of the putative class while avoiding duplicative and unnecessary work. On the litigation team from Francis Mailman is James A. Francis, John Soumilas and Edward H. Skipton. From Golan is Yvette Golan. From Leeds Brown Law is partner Jeffery K. Brown and Senior Associates Michael A. Tompkins. From Carlson Lynch, partners Gary Lynch and Edward W. Ciolko will staff the case, along with Nicholas Colella. From Edelman Combs, Daniel A. Edelman, Cathleen M. Combs, Tara L. Goodwin, and Kasun Wijegunawardana. And all five firms will draw on others from within their firms as the case demands. Notably, proposed interim class counsel are currently working together

on other actions involving similar claims against colleges and universities throughout the country, and will be able to draw on that experience and cooperative work to create efficiencies in this consolidated action.

CONCLUSION

In the interest of judicial economy and for the reasons set forth above, the Plaintiffs respectfully request that the Court consolidate the Class Actions and appoint Francis Mailman, Golan, Leeds Brown, Carlson Lynch, and Edelman Combs as co-lead interim class counsel.

Dated: October 30, 2020

Respectfully submitted,

By: /s/ James A. Francis

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CERTIFICATE OF SERVICE

I, James Francis, hereby certify that I have filed the foregoing document via this Court's CM/ECF system on October 30, 2020. The operation of the electronic filing system will serve Notice of Electronic Filing on all parties to this litigation. Any additional parties will be served via electronic mail.

/s/ James A. Francis

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