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| **DOCKET NO. X10-UWY-CV-23-6070643-S** | **:** | **SUPERIOR COURT** |
| **RIDENHOUR, TERENCIA, ET AL.** | **:** | **COMPLEX LIT. DOCKET** |
| **V.** | **:** | **AT WATERBURY** |
| **CAREER TRAINING SPECIALISTS, LLC d/b/a STONE ACADEMY, ET AL.** | **:** | **JANUARY 10, 2025** |

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

Pursuant to Connecticut Practice Book § 9-9(c), the Plaintiffs, through counsel, seek preliminary approval of the proposed settlement, reached on behalf of the Class Members with defendants Career Training Specialists, LLC d/b/a Stone Academy, Joseph Bierbaum, and Richard Scheinberg as Trustee for the Creative Career Trust (together the "Defendants"). Defendants do not object to the relief sought herein. If preliminary approval is granted, the Plaintiffs request that the Court enter the proposed order attached as Exhibit A hereto.

Preliminary approval is warranted if a proposed class action settlement is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *In re. NASDAQ Market-Makers Antitrust Litigation*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("NASDAQ I") (citations omitted). Here, there is no question that the proposed settlement – pursuant to which Class Members will receive guaranteed monetary and non-monetary relief for highly contested factual and legal claims – is fair, reasonable, and adequate.

The parties reached their proposed settlement after twenty-months of hard-fought litigation, including a prejudgment remedy hearing, significant motion practice in this Court, document discovery, fourteen depositions, and multiple mediation sessions. The proposed settlement was the product of extended arm's length negotiations between experienced counsel and was the subject of extensive mediation between the parties, which first began in April 2024, followed by several months of intense, protracted negotiations. If approved, the Settlement will

provide monetary compensation to individuals who were harmed by the conduct alleged in this action who may not have otherwise received redress, as well as non-monetary relief to resolve the claims in the Class's federal litigation.[1] The Settlement represents a favorable outcome for the Class as a whole. Counsel for the Class believes and represents that the proposed settlement is fair, reasonable, and appropriate.

## I. PROCEDURAL HISTORY

This action was commenced in May 2023 by plaintiffs Terencia Ridenhour, Danidsha Ayala, Carolina Carrion, Shakima N. Glover, Diane Lukowski, Amy Otis, Kristie Ricker, and Wendy Serrano (collectively, the "Plaintiffs"), on behalf of themselves and persons similarly situated, pursuant to Connecticut General Statutes §§ 52-104 and 52-105 as well as Connecticut Practice Book §§ 9-7 and 9-8, against defendants Career Training Specialists, LLC d/b/a Stone Academy, Joseph Bierbaum, and Richard Scheinberg as Trustee for the Creative Career Trust (together the "Defendants")[2], for alleged conduct that occurred at Stone Academy between November 2021 and February 2023. Plaintiffs alleged that during this time period, defendants violated the Connecticut Unfair Trade Practices Act ("CUTPA"), breached contractual or quasi-contractual agreements, breached the covenant of good faith and fair dealing, and were unjustly enriched when the school and its owners failed to adequately educate its students and shuttered

[1] Class Plaintiffs also filed a separate action, against Timothy Larson, Commissioner of the Connecticut Office of Higher Education, Sean Seepersad, Division Director of Academic Affairs, Manisha Juthani, Commissioner of the Connecticut Department of Public Health, and Chris Andresen, Section Chief for Practitioner Licensing and Investigations on December 26, 2023. *Larson, et al. v. Ridenhour, et al*., 3:23-cv-01672. (the "Federal Action"). This Settlement and Preliminary Approval filing facilitates the dismissal of the Federal Action on the bases set forth in the term sheet attached hereto as Exhibit C and agreed to with the Attorney General's Office.

[2] The original action was also brought against Mark Scheinberg and Gary Evans, though the claims against these parties have been voluntarily withdrawn. (Entry Nos. 144.00, 234.00).

its doors without advanced notice to students. The Plaintiffs initiated this action seeking monetary relief for both themselves and other similarly situated individuals. Plaintiffs also filed an application for prejudgment remedy, which was granted on December 4, 2023 in the amount of Five Million Dollars ($5,000,000.00). (Entry No. 116.10).

The parties agree that this action has been hard fought and expensive to litigate. In the two-plus years of litigation, the parties have engaged in substantial motion practice, extensive discovery, numerous Court hearings and adjudications, and more than ten mediation sessions. The parties respectfully refer this Court to the judicial docket and rely on the arguments briefed throughout for the parties' positions in the action.

In April 2024, the parties commenced good faith settlement discussions. The issues in this global settlement proved to be extremely complicated, involving both private and public stakeholders. The first settlement conference was facilitated by Magistrate Judge Farrish on April 16, 2024, and thereafter the parties attended multiple conferences before Judge Farrish and Judge Pierson. The parties persevered to reach this proposed settlement. On January 9, 2025, the parties filed a Joint Notice of Settlement (Entry No. 241.00) formally apprising the Court that the parties had reached a settlement pending Court approval pursuant to Practice Book §§ 9-9 et seq.

On December 31, 2024, Plaintiffs filed their Motion for Class Certification. (Entry No. 238.00). On January 2, 2024, the Court (Pierson, J) granted Plaintiffs' Motion and defined the Class as follows:

All Stone Academy students

(1) enrolled in a day or night Practical Nursing program offered by Stone Academy;

(2) between November 1, 2021 and February 14, 2023; and

(3) who were unable to graduate as a result of Stone Academy's closure.

## II. THE PROPOSED SETTLEMENT

The parties' Settlement Agreement is attached as Exhibit B hereto. The proposed Settlement provides for a $5,000,001.00 (Five Million and One Dollar) cash payment to a common fund for the benefit of the proposed Settlement Class (the "Common Fund"). This monetary relief is for the benefit of each member of the Proposed Settlement Class as well as complete and final resolution of the potential claims in this matter, including resolution of potential individual claims, without necessitating individual hearings or proceedings. The proposed Settlement also provides programmatic, non-monetary relief to qualifying class members.

### A. Monetary Relief

Pursuant to the proposed Settlement, the total settlement amount of $5,000,001.00 (Five Million and One Dollars) would be divided equitably amongst the Settlement Class Members after certain deductions. Specifically, the parties propose that the following be deducted from the Common Fund before distribution of the remaining net proceeds to the Class Members:

a. attorneys' fees and costs[3] associated with pursuing this matter;[4]

[3] The State of Connecticut has agreed to waive civil penalties, fees, and costs, and therefore will not seek recovery from the Common Fund.

[4] Class counsel will submit an application for attorney's fees and costs pursuant to Practice Book § 9-9(e) prior to the final approval of the Class Settlement. However, for preliminary information purposes only, to the extent it is relevant to the Court's assessment of the present Motion for Preliminary Approval, Plaintiffs' counsel represents that they were retained by the eight-named class representatives on a one-third contingency fee basis pursuant General Statutes § 52-251c (subject to court approval in any class action) and that the preliminary estimated costs-to-date in this matter are approximately $45,000.00. To increase the amount each class member can collect, Class counsel intends to request only a twenty-five percent contingency fee of the settlement fund proceeds only. Given the value of the non-monetary relief and the significant amount of work that remains to be done by class counsel to effectuate the settlement agreement,

b. Class Representative Service Awards;[5]

c. Costs of the administration of the settlement, including costs associated with locating and issuing notice to Class Members, through an already agreed upon third-party settlement administrator: Atticus Administration, LLC; and

d. payment for optional remedial course for Subclass I (defined below), to be offered by a qualified institution, not to exceed $150,000.

Additional details regarding the proposed Settlement are set forth below.

The proposed Settlement divides the Settlement Class into two groups: (i) those students who were eligible to take their exit exam or were enrolled in VATI (Virtual Assessment Technologies Institute – a remediation course that allows students to retake their exit exam); and (ii) all other students enrolled at Stone Academy during the Class Period. The reason for the subclasses is to acknowledge the difference in any value conferred by Stone Academy on each group. The students in the first group (which is likely no more than 15% of the total class) completed their coursework at Stone Academy and are eligible to sit for the NCLEX exam upon

much of which will be to obtain further legislative relief for the class, the actual attorney's fees as a percentage of the total value conferred on the class is, and will be, less than 25% of the recovery. As noted herein, counsel for Plaintiffs will file a complete motion for attorney's fees and costs at the appropriate time and the information contained herein is for information purposes only and not intended to act in any way as a motion for the award of attorney's fees.

[5] Class counsel will similarly submit a Motion for Incentive Award prior to the final approval of the Class Settlement. The Parties have agreed that when the Plaintiffs file a Motion for Final Approval they will propose and seek Court approval of a recommended amount of compensation to the nine class representatives as a Class Representative Service Award, not to exceed $5,000.00 each. The Plaintiffs will set forth the basis for the award of a Class Representative Service Award in greater detail as part of the Plaintiffs' Motion for Final Approval, but preliminarily Class Counsel notes that each of the Class representatives has been instrumental in the prosecution and outcome in this matter. Each named plaintiff has had to answer written discovery requests and was deposed in this matter. In addition, the Class representatives were active participants in settlement discussions and were involved throughout the mediation process.

the successful passage of their exit exam. They received enough value from Stone Academy to allow them the opportunity to advance in the Practical Nursing profession. By contrast, the vast majority of students in the class who are in the second group are unable to use any of their credits that were awarded to them by Stone Academy, and are not eligible to advance in their careers. In other words, this second group of students received no value from Stone Academy despite the time, money and credits earned by them.

To address these factors in the most equitable manner to the class members, Class Plaintiffs propose that the largest group of students receive distributions proportionate to the credits conferred by Stone Academy. In other words, the student who had completed 90% of her credits and had spent more time and money in the LPN program experienced larger damages than the student who enrolled three months before Stone Academy closed and had only completed 10% of the program. Plaintiffs propose that the smaller number of students in the first group receive uniform distributions on the mean of the distributions that go to the second group. Defendants agree to Plaintiffs' proposal to pay Class Members who do not opt-out of participating in the Class Settlement a sum consistent with the following formula:

**Subclass I (End-of-Program Students)**:

> This group will be allocated equal, per share total from the net total settlement. Such amount is equal to the net total settlement divided by the total number of students in the entire class.[6]

[6] For clarity, Class Members in Subclass I will receive a uniform payment determined by taking the net proceeds remaining from the Common Fund, less Court-approved attorney's fees and costs, as well as any Class Representative Service Awards, administrative costs, and programmatic costs, divided evenly amongst the number of Settlement Class members as determined after the appropriate notice and opt-out period.

**Subclass II (Middle-of-Program Students)**:

> The remaining settlement amount for this group will be equal to the net total settlement, less the total distribution amount to Subclass I. This total will then be divided by the sum of all credits completed for students in Subclass II, which equals the proportional share per credit. To calculate an individual student's share, simply take their total number of credits completed and multiply it by the proportional share per credit.[7]

The parties have agreed that in order for an individual to qualify to receive a payment, no claim or claim form will be required for any individuals who received an audited transcript from the Connecticut Office of Higher Education, as there is no dispute that these individuals, who have been identified by Stone Academy's records, are members of the Class and Settlement Class and will receive payment, provided that the Settlement Administrator is able to locate them using its usual and customary procedures.[8] The parties have agreed, however, that a "Claim Form" will be required for those individuals who did not receive such audited transcripts, as such individuals' records are not readily available (the "Additional Class Members). The Additional Class Members who submit timely Claim Forms that comply with the terms of the Proposed Settlement shall also be entitled to payment.

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[7] Thus, Class Members in Subclass II will receive an equitable payment determined by taking the net proceeds remaining from the Common Fund, less Court-approved attorney's fees and costs, as well as any Class Representative Service Awards, administrative costs, and programmatic costs, and the equal shares from Subclass I, then dividing that total by the total number of credits completed by the members of Subclass II to find the per credit proportional share. This per credit proportional share will then be multiplied by the number of credits each member of Subclass II completed to find their equitable total.

[8] If a Settlement Class Member is deceased or incapacitated, a representative must identify themself to the Settlement Administrator within 90 days of notice being sent in order for payment to be made.

In order for Additional Class Members to qualify for receipt of a payment, they must return a Claim Form (attached hereto as Exhibit D). The Claim Form requires that the Additional Class Members: (1) state affirmatively that they attended Stone Academy as a Practical Nurse student between November 1, 2021 and February 14, 2023; (2) that, as a result of Stone Academy's closure they were unable to graduate; (3) include a copy of their Stone Academy transcript, which will be maintained confidentially by the settlement administrator; and (4) if unable to include a copy of their transcript, an affirmation that they made reasonable efforts to obtain their transcript and an explanation as to why their transcript was not obtainable. The parties agree that the Claim Form shall be executed under penalty of perjury and sworn to before a notary public and/or Commissioner of the Superior Court and/or other competent authority to administer oaths. The deadline for Additional Class Members to submit their Claim Form will be thirty (30) days from the date the Notice of Settlement is sent to Class Members.

The Proposed Settlement provides that all Settlement Class Members shall be entitled to the payment unless an individual chooses to opt-out of the Settlement pursuant to Practice Book §§ 9-9 et. seq. and/or if the individual has already released their claims relating to this matter pursuant to a separate agreement and/or if the settlement administrator cannot locate such Class Member after a reasonable search using the settlement administrator's customary methods for locating Class Members. The opt-out date for participation in the Settlement Class will be thirty (30) days from the date the Notice of Settlement is sent. *See* Proposed Opt-Out Form (attached as Exhibit E). In addition, if a Class Member has died, or is incapacitated, a representative must identify themselves and provide sufficient evidence to the class administrator of that person's authority to act on the estate's or incapacitated Class Member's behalf. The parties agree that

the deadline for providing such proof of authority will be thirty (30) days from the date the class notice is sent to Class Members.

After the Court has issued an order of Final Approval, the Defendants shall be required to transfer the Common Fund specified above from the escrow account of Hassett & George P.C. to an account established by the Settlement Administrator within five (5) days from the date of Final Approval if there is no timely appeal noticed by an objector from the order of Final Approval (or within 30 days of final resolution of any appeal from the order of Final Approval if an appeal is taken and the order of Final Approval is affirmed on appeal).

**B. Non-Monetary Relief**

In addition to the monetary relief, the proposed Settlement contemplates certain programmatic and other equitable forms of relief. Specifically, the parties propose that the Connecticut Office of Higher Education[9] will identify and procure the services of an institution to offer students in Subclass I an optional pre-VATI[10] remediation course as well as the administration of VATI, such that those students may, assuming the successful completion of the VATI program, sit for the licensure examination–the NCLEX. This structure offers students closest to the completion of their degree a realistic opportunity and path forward toward that goal. The intent of the optional remediation course is to allow students, who have been out of school for nearly two-years, to relearn the fundamentals necessary for success. The pre-VATI

[9] Though not a party to this agreement, the Connecticut Office of Higher Education and the other necessary state actors agree to be bound to the term sheet attached hereto as Exhibit C. For further specifics as to relief, Class Counsel refers the Court to the attached terms sheet.

[10] VATI is an online program that helps nursing students prepare for the NCLEX. The program provides 12 weeks of access to an interactive online review resource and one-on-one access to a nurse educator. The program culminates in an exit exam, meant to be predictive of the NCLEX. Passage of the exit exam is a pre-condition to the taking of the NCLEX.

remediation course shall be paid for from the Common Fund, in an amount not to exceed $150,000.00 (One Hundred and Fifty Thousand Dollars). The administration of the VATI program shall be paid for through the Student Protection Account, and thereby will not further diminish the net total settlement.

The Office of Higher Education further agrees to support and facilitate further instruction of former Stone Academy Students, in either Subclass, at Griffin Hospital School of Allied Health Careers ("Griffin Hospital"), provided that sufficient student demand exists to coordinate additional offerings at Griffin Hospital to continue to teach out former Stone Academy students who are qualified in the judgment of Griffin Hospital. Such teach outs will continue to be provided at no cost to the Class Members who choose to enroll.

The Department of Public Health[11] agrees to close all outstanding investigations into Stone Academy graduates who have not completed the reNurse course, and further agrees to not initiate investigations of future graduates solely on the basis of their attendance at Stone Academy between November 1, 2021 and the school's closure.

Finally, Office of the Attorney General, in cooperation with Class Counsel, shall support reasonable legislative proposals to address the lack of ability of the students in Subclass II's to complete their education and to further provide for additional compensation for out-of-pocket tuition expenses not previously reimbursed from the Student Protection Fund under Section 67 of 2023 Public Act 204. Thus, the Office of the Attorney General and Class Counsel will jointly seek relief in the form of grants and scholarships from the Connecticut legislature for interested Class Members to utilize to pursue a degree in nursing or related health fields. The Office of the

[11] As above, though not a party to this agreement, the Connecticut Department of Public Health agrees to be bound to the term sheet attached hereto as Exhibit C.

Attorney General and Class Counsel will further seek an amendment to Section 67 of 2023 Public Act 204 to include reimbursement for out-of-pocket tuition expenses for completed Stone Academy credits by students who do not qualify for, or were unable to take advantage of, the teach-out through Griffin Hospital or the VATI administration discussed above.

As with the monetary component to the proposed Settlement, the parties have agreed that in order for an individual to qualify, no claim or claim form will be required for any individuals who received an audited transcript from the Connecticut Office of Higher Education, as there is no dispute that these individuals, who have been identified by Stone Academy's records, are members of the Class. However, the parties have agreed that a "Claim Form" will be required for those individuals who did not receive such audited transcripts as such individuals' records are not readily available. The Additional Class Members who submit timely Claim Forms that comply with the terms of the Proposed Settlement shall also be entitled to participate in such equitable relief to the extent they qualify. Such equitable relief may require additional applications by Class Members, which are to be created and administered by the Office of Higher Education.

The deadline for Additional Class Members to submit their Claim Form, as well as the deadline to opt-out of the Settlement and the additional relevant deadlines discussed above apply with equal weight here.

**C. Releases**

Upon Final Approval of the Settlement by this Court, in accordance with the Settlement Agreement and by order of the Court, the Plaintiffs, all Settlement Class Members, their heirs, executors, administrators, estates, trustees, subrogees, agents, attorneys and/or assigns along with their Counsel (including counsel affiliated with their law firms), will, on behalf of themselves

and the Settlement Class, release and forever discharge Mark Scheinberg, Career Training Specialists, LLC d/b/a Stone Academy, Joseph Bierbaum, Richard Scheinberg in his capacity as Trustee for the Creative Career Trust, Sound Education, LLC, Olmstead Realty, Oyster River Realty, Parker Street Properties, LLC, Creative Trust Work Force, LLC, Creative Workforce LLC, SE Iranistan LLC and The Creative Career Trust (2021) (the "Releasees"), their attorneys, insurers, assignees, transferors, transferees, principals, partners, officers, directors, employees, servants, subsidiaries, parent corporations, affiliates, successors, stockholders, agents, and representatives, from any and all Claims arising out of or relating to the closure of Stone Academy in February 2023, and any academic instruction or advertising practice, including but not limited to any claims that were or could have been alleged in the Action (the "Release").

As was referenced above, the Parties have engaged in extensive arms-length negotiations intended to represent and further their respective interests and positions. The proposed Settlement was reached after extensive assistance of two mediators – Magistrate Judge Thomas O. Farrish and Judge W. Glen Pierson– after many months of negotiations. This proposed Settlement is a fair, reasonable, and adequate result for the members of the Settlement Class. Each Class Member will have the opportunity to receive (and many will automatically receive, without the need to take any action) monetary relief, without the need to disclose personal academic records (other than transcripts for those who did not receive an audited transcript from the Connecticut Office of Higher Education), sit for a deposition, appear at any hearing or otherwise offer proof. Moreover, the proposed Settlement ensures that each Class Member will receive, or have the opportunity to receive, monetary relief for claimed harm that is highly contested by Defendants and which may not have been obtained in contested litigation, but for this resolution. The proposed Settlement not only provides monetary relief, but also

advances the academic opportunities for the Class Members to complete their degrees and practice as LPNs. As further explained below, given the risk, uncertainty and expense of continued litigation, the proposed Settlement is a fair, reasonable, and adequate result and justifies notice to the Settlement Class.

## III. CERTIFICATION OF THE SETTLEMENT CLASS

Pursuant to the proposed Settlement, and in accordance with the Court's prior order certifying the Class, the proposed Settlement Class is defined as follows:

All Stone Academy students

(1) enrolled in a day or night Practical Nursing program offered by Stone Academy;

(2) between November 1, 2021 and February 14, 2023; and

(3) who were unable to graduate as a result of Stone Academy's closure.

As noted above, there are two sub-classes who fall within the above defined Settlement Class: : (i) those who were eligible to take their exit exam or were enrolled in VATI (Virtual Assessment Technologies Institute – a remediation course that allows students to retake their exit exam); and (ii) everyone else. As discussed above, the known individuals who were subject to and received an audited transcript from the Connecticut Office of Higher Education are automatically part of the Settlement Class, assuming they can be located and they do not opt-out of the proposed Settlement. In addition, any Settlement Class Members who did not receive an audited transcript, but still fall within the class definition constitute the Additional Class Members and will be eligible to participate in the Settlement Class upon timely submission of a Claim Form as discussed above. The total number of Additional Class Members is presently unknown but the parties do not anticipate the number of Additional Class Members to be significant.

## IV. STANDARD FOR PRELIMINARY APPROVAL

Practice Book § 9-9(c) requires court approval of class action settlements. *See* Practice Book § 9-9(c)(1)(A) ("The court must approve any settlement, withdrawal, or compromise of the claims, issues, or defense of a certified class."). It is well-settled that "[b]ecause our class certification requirements are similar to those embodied in Rule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class action is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-7 and 9-8." *Rodriguez v. Kaiaffa*, 337 Conn. 248, 263 n.15 (2020) (quoting *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 322–23 (2005)). Federal case law is also instructive as to the approval of class action settlements. *See Gray v. Foundation Health Systems, Inc*., Docket No. (X06) CV-990158549-S, 2004 WL 945137, at *1 (Conn. Super. Ct., Apr. 21, 2004) (Alander, J.) ("Reference to federal court decisions regarding approval of class action settlements is especially appropriate in light of the dearth of Connecticut appellate authority on the issue.").

When a proposed settlement is reached, the Court must first determine whether the terms of the settlement warrant preliminary approval such that notice may be provided to the members of the settlement class. *In re Currency Conversion Fee Antitrust Litig*., No. 01 MDL 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006). "Before the settlement of a class action may be approved, the trial court must determine that the settlement is fair, adequate, and reasonable, and not a product of collusion." *Id.* (citing *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)). "In other words, the court must make 'a preliminary evaluation' as to whether the settlement is fair, reasonable and adequate." *In re Currency Conversion*, 2006 WL 3247396, at *5 (quoting *In re NASDAQ Market-Makers Antitrust Litig*., 187 F.R.D. 465, 473 (S.D.N.Y. 1998) ("*NASDAQ III*")). In *City of Detroit v.*

*Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), the United States Court of Appeals for the Second Circuit identified nine relevant factors for a trial court to consider when determine the fairness of a class action settlement:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Preliminary approval does not require the Court to make findings as to each of these nine factors. Rather, the test for granting preliminary approval is whether the proposed settlement is "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard."[12] *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ I*") (quotations omitted).

[12] Some of the factors relevant to the fairness and adequacy of the settlement are plainly "impossible to weigh prior to notice and a hearing," such as "the reaction of the class to the settlement." *See, e.g., Reade-Alvarez v. Eltman, Eltman & Cooper, P.C.*, 237 F.R.D. 26, 34 (E.D.N.Y. 2006); *see also In re Prudential Securities, Inc. L.P. Litigation*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) (recognizing that "the Court will be in a position to fully evaluation to Grinnell factors at the fairness hearing").

Therefore, "[a]t this stage of the proceeding, the Court need only find that the proposed settlement fits within the range of possible approval." *In re Prudential Securities Inc. L.P. Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995). Accordingly, "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval should be granted." *In re NASDAQ Market-Makers Antitrust Litig.*, No. 94 CIV, 3996, 1997 WL 805062, at *8 (S.D.N.Y. Dec. 31, 1997) ("*NASDAQ II*").

## V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

### a. The Settlement Is Presumed to be Fair Because It Was the Result of Lengthy, Hard-Fought Litigation and Arms-Length Negotiations

The Parties have diligently pursued their respective positions throughout the pendency of this matter, both in public filings with the Court as well as during extensive settlement discussions, which first began in April 2024 and continued vigorously until December 2024.

Where "the integrity of the arm's length negotiation process is preserved . . . a strong initial presumption of fairness attaches to the proposed settlement" and "great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *NASDAQ III*, 187 F.R.D. at 474 (citations and quotations omitted); *see also Wal-Mar Stores, Inc. v. VISA USA Inc.*, 3967 F.3d 96, 116 (2d Cir. 2005) ("A presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery."). The process leading to the settlement "must be examined 'in light of the experience of counsel, the vigor with which the case was prosecuted, and the coercion or collusion that may have marred the

negotiations themselves.'" *Id.* at 473–74 (quoting *Malchman v. Davis*, 706 F.2d 426, 433 (2d Cir. 1983)).

In this case, highly experienced counsel on both sides negotiated this proposed Settlement. Class Counsel's firm has extensive experience in the prosecution of complex commercial and class action litigation. Stone Academy and its owners were represented by multiple senior lawyers at three highly respected law firms. Moreover, the proposed Settlement was brokered through extensive involvement of Magistrate Judge Farrish and Judge Pierson over the course of several months. During the two years that this case has been vigorously litigated, counsel for both sides have developed a comprehensive knowledge of the relevant facts and law by conducting extensive discovery and engaging in substantial motion practice before this Court. As a result, counsel for both the Class Members and Defendants have had a unique opportunity to assess the continuing litigation risk to their respective clients of not settling. As a result, by the time the settlement was reached, counsel had "a thorough understanding of the complexity of the issues and the strengths and weaknesses of their respective claims, defenses and strategies." *In re Currency Conversion*, 2006 WL 3247396, at *5 (quotations omitted).

Furthermore, the Settlement was reached in good faith after fair and honest negotiations. The arm's-length negotiations took place over several months, including multiple in-person meetings and numerous telephonic conferences. Both sides zealously pressed their positions throughout the negotiation process and have continued to do so even through the process of negotiating their formal written agreement.

Settlement at this juncture of the litigation is appropriate in light of the extensive fact discovery completed to date. At the time the settlement negotiations began, Defendants were

contemplating a Motion for Summary Judgment that, if granted, threatened to extinguish the Class Members' claims. Moreover, resolution via settlement alleviates the need for a costly trial.

Class Counsel has made a considered judgment that the Settlement is not only fair, reasonable and adequate, but also a favorable result for the Settlement Class given the unique claims at issue in this matter, the legal and factual defenses asserted by the Defendants and considering the expense, time and risks associated with pursuing this matter through trial. Class Counsel's opinion is entitled to "great weight." *NASDAQ III*, 187 F.R.D. at 474; *see also Aramburu v. Healthcare Financial Services, Inc*., No. 02-CV-6535, 2009 WL 1086938, at *2 (E.D.N.Y. Apr. 22, 2009) ("[I]n appraising the fairness of a proposed settlement, the view of experienced counsel favoring the settlement is entitled to a great weight.") (quotations omitted).

**b. In View of the Litigation Risks, the Substantive Terms of the Settlement Are Highly-Favorable to the Settlement Class**

When weighed against the risks of continued litigation, the proposed Settlement compares favorably with the results the Plaintiffs could have obtained after trial and exhaustion of appeals. This recovery is, at the very least, "well within the range of reasonableness." *See In re Michael Milken and Assoc. Secs. Litig*., 150 F.R.D. 57, 67 (S.D.N.Y. 1993) (noting that in the *Grinnell* case, the proposed settlement represented 3.2% to 3.7% of the potential recovery). Defendants have raised several legal defenses which could have resulted in dismissal of this matter prior to trial, potential de-certification of the class or a verdict in favor of the Defendants after a full trial on the merits. Also, even if the Plaintiffs successfully proceeded to trial and obtained a verdict in their favor, there is a high likelihood that there would have been impediments to collecting any more monetary relief than what was actually agreed to as part of this Settlement.

Absent this Settlement, Class Members also faced the likelihood of significant further delay, including the rigors of trial and the prospect of subsequent appeals. *See, e.g., In re Michael Milken & Assocs. Sec. Litig*., 150 F.R.D. 57, 65 (S.D.N.Y. 1993) (noting that "[i]t must also be recognized that victory even at the trial stage is not a guarantee of ultimate success" and citing a case where a "multimillion dollar judgment was reversed."); *Maley v. Del Global Techs. Corp*., 186 F.Supp.2d 358, 363 (S.D.N.Y. 2002) (approval granted where "[d]elay, not just at the trial stage but through post-trial motions and the appellate process, would cause Class Members to wait for years for any recovery, further reducing its value"); *In re Visa Check/Matermoney Antitrust Litigation,* 297 F.Supp.2d 503, 510 (E.D.N.Y. 2003) (fact that the class faced a long trial and the additional time it would take to exhaust all appeals "weigh[ed] heavily in favor of approving Settlements."). Indeed, given the nature of the harm to the ability of students to complete their educations, their ability to obtain meaningful relief would only diminish with the passage of time.

In light of these significant litigation and appeal risks, the proposed Settlement is fair, reasonable and adequate. In these circumstances, it is clearly preferable "to take the bird in the hand instead of the prospective flock in the bush." *See In re Prudential Sec*., 163 F.R.D. at 210.

**c. The Notice Program is the Best Practicable Notice to the Settlement Class Members**

After preliminary approval of a proposed class action settlement is granted, Practice Book § 9-9(c)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, withdrawal or compromise." "The Court may approve a settlement, withdrawal, or compromise that would bind class members, only after a hearing and on finding that the settlement, withdrawal, or compromise is fair, reasonable, and adequate." Practice Book § 9-9(c)(1)(C).

The parties have negotiated a notice protocol that ensures the best practicable notice to all Settlement Class Members while also affording them the ability to oppose the Settlement or opt-out if they so choose.

The parties have agreed to retain Atticus Administration, LLC to serve as a third-party settlement administrator in this matter, selected after a bidding process. Atticus has extensive experience administering class action notice and settlements. The notice requirements, as contemplated by the proposed Settlement, require that the settlement administrator provide notice to all Settlement Class Members, based on a list provided by Stone Academy (with addresses updated using the settlement administrator's customary procedures to do so, including the USPS database) via short form mailed notice in the substantive form attached hereto as Exhibit F. The settlement administrator will also arrange for publication notice one time in newspapers of general circulation in the area served by Stone Academy. The parties agree that the newspapers shall be: (1) Connecticut Post; (2) The Hartford Courant; and (3) The New Haven Register. The published Notice shall be in substantially the following form: "If you were a practical nurse student at Stone Academy during the period between November 1, 2021 and February 14, 2023, but were unable to graduate due to Stone Academy's closure, your rights may be affected by a class action settlement. For further information, visit [website url] or call [Settlement Administrator phone number]." The settlement administrator will establish a settlement website and a toll-free number to process any questions or claims. The settlement administrator will also disseminate a long-form notice to Class Members who request one through the settlement website or through a toll-free number, in the form attached hereto as Exhibit G.

The parties have agreed that the settlement administrator shall review, administer and pay valid claims made pursuant to the Settlement. Finally, as noted above, the costs associated with issuing Notice and the administration of the settlement will be paid from the Common Fund.

The notice program outlined by the parties is the best practicable notice under the circumstances and is reasonably calculated to reach substantially all members of the Settlement Class.

## VI. THE PROPOSED SCHEDULE OF EVENTS

In connection with the preliminary approval of the Settlement, pursuant to Practice Book § 9-9(c), the Court must set a date for a Fairness Hearing, dates for filing papers in support of the Settlement, and a deadline for objecting to the Settlement (and set dates for notice to the Settlement Class). The Parties propose the following schedule:

| | |
|---|---|
| Mail Notice | 5 days from Preliminary Approval |
| Publication Notice | 5 days from Preliminary Approval |
| Deadline for motions and briefs in support of application for attorney's fees and costs and Settlement Class Representative service awards | 14 days from Mail Notice |
| Deadline for Objections | 30 days from Mail Notice |
| Deadline for Opt-Out | 30 days from Mail Notice |
| Deadline for Claim Form | 30 days from Mail Notice |
| | |

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|---|---|
| Deadline to submit proof to act for an estate of a Class Member or incapacitated Class Member | 30 days from Mail Notice |
| Deadline for briefs and materials in support of final approval of the Settlement, including responses to Objections | 10 days prior to Fairness Hearing |
| Fairness Hearing | February 26, 2025[13] |

## VII. CONCLUSION

For the foregoing reasons, the Court should grant preliminary approval of the Settlement, direct notice to the Settlement Class Members, schedule a Fairness Hearing, and grant such other and further relief as the Court deems proper and necessary. The Parties request that the Court enter an Order substantively similar to the proposed Order attached hereto as Exhibit A.

**PLAINTIFFS**

By: */s/ Timothy C. Cowan*

David A. Slossberg
Erica O. Nolan
Timothy C. Cowan
HURWITZ SAGARIN SLOSSBERG & KNUFF LLC
135 Broad Street
Milford, CT 06460
DSlossberg@hssklaw.com
ENolan@hssklaw.com
TCowan@hssklaw.com

## CERTIFICATION

[13] Consistent with the Court's Order, Docket No. 241.10.

I hereby certify that a copy of the foregoing was sent via electronic mail on this 10th day of January, 2025 to the following:

James J. Healy, Esq.
Cowdery Murphy Dannehy & Healy LLC
280 Trumbull Street, 22nd Floor
Hartford, CT 06103
Jhealy@cmandh.com

Peregrine Z. Rowthorn, Esq.
PO Box 370496
West Hartford, CT 06137
perry@rowthorn.com

*Counsel for Career Training Specialists LLC d/b/a Stone Academy*

Craig A. Raabe, Esq.
Seth Klein, Esq.
Izard Kindall & Raabe LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
craabe@ikrlaw.com
sklein@ikrlaw.com

*Counsel for Joseph Bierbaum and Richard Scheinberg, Trustee for Creative Career Trust*

*/s/ Timothy C. Cowan*
Timothy C. Cowan