

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHANEL ADAVENAIXX, individually
and on behalf of all similarly situated,

Plaintiff,

v.

HOWARD UNIVERSITY,

Defendant.

Civil Action No. 1:23-cv-00663-DLF

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is made as of April __, 2024, by and among: (i) Plaintiff and Settlement Class Representative Chanel Adavenaixx (the “Settlement Class Representative”), and (ii) Defendant Howard University (“Howard”).¹ The Settlement Class Representative and Howard are individually each a “Party,” and collectively, the “Parties.” This Agreement is entered in order to effectuate a full and final settlement and dismissal with prejudice of the Released Claims, on the terms set forth in this Agreement and subject to final approval of the Court.

WHEREAS, the Settlement Class Representative asserted claims on behalf of a putative class against Howard to recover for the alleged lost benefit of the in-person instruction for which she alleges she contracted and paid, in connection with Howard’s temporary transition to remote instruction necessitated by the COVID-19 global pandemic and associated government orders;

¹ All terms with initial capitalizations not otherwise defined shall have the meanings set forth in the Definitions Section.

WHEREAS, Howard denies any wrongdoing in connection with its temporary transition to remote instruction;

WHEREAS, the Settlement Class and Howard desire to settle their disputes without further litigation on the terms and conditions set forth in this Agreement;

WHEREAS, in consideration of the promises and the mutual covenants set forth in this Agreement, the Settlement Class, acting by and through Class Counsel, and Howard have agreed to the terms and conditions set forth in this Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, IT IS HEREBY AGREED by the Parties, subject to Court approval, as follows:

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

1. **“Action”** means *Adavenaixx v. Howard University*, C.A. No. 1:23-cv-00663-DLF (D.D.C.).
2. **“Administration Expenses”** means (i) the costs, fees, and expenses incurred by the Claims Administrator in connection with its functions as described in this Agreement; (ii) fees and expenses incurred in connection with the Escrow Account; and (iii) Taxes.
3. **“Agreement”** means this Settlement Agreement and the *In Camera* Supplement together.
4. **“Claims Administrator”** means Epiq Class Action & Claims Solutions, Inc., or such other reputable class settlement administration company or person approved by the Court to perform certain duties specified in the Agreement, including without limitation serving as Escrow Agent for the Settlement Fund, overseeing distribution of Notice, handling all approved payments

out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties) that may be owed on any income earned by the Settlement Fund. Class Counsel's assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class to disclose to Class Counsel and the Claims Administrator all information called for by the Claims Administrator to perform its duties and functions under this Agreement, consistent with the written consent provisions of the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and Howard University's Student Privacy Rights Policy.

5. **"Class Counsel"** means the law firms Gainey McKenna & Egleston and Bursor & Fisher, P.A.

6. **"Class List"** means the list described in Section IV.1.

7. **"Class Representative Award"** means the payment from the Settlement Fund awarded by the Court to the Settlement Class Representative.

8. **"Court"** means the United States District Court for the District of Columbia and/or Judge Dabney L. Friedrich.

9. **"Day"** or **"Days"** has the meaning ascribed in Federal Rule of Civil Procedure 6. All time periods specified in this Agreement shall be computed in a manner consistent with Federal Rule of Civil Procedure 6.

10. **"Effective Date"** means the first date after which all of the following events and conditions have been met or have occurred: (i) Class Counsel and Howard have executed the Agreement; (ii) the Court has entered the Preliminary Approval Order; (iii) the Court has entered Final Judgment; and (iv) the Final Judgment becomes Final.

11. **“Escrow Account”** means the separate, interest-bearing escrow account to be established by the Claims Administrator under terms agreed upon by all Parties at a depository insured by the Federal Deposit Insurance Corporation.

12. **“Escrow Agent”** means the Claims Administrator.

13. **“Fee and Expense Award”** means the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Class Counsel payable from the Settlement Fund.

14. **“FERPA”** means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99 (collectively, “FERPA”).

15. **“FERPA Block”** means a student or former student’s exercise of their right under FERPA to prevent Howard’s disclosure of their name, mailing address, and/or email address by asking the University to keep their records with the Registrar “confidential.”

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

17. **“Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Court enter Final Judgment approving the Agreement and the Court will determine the Fee and Expense Award and the Class Representative Award.

18. **“Final Judgment”** means the final judgment and order to be entered by the Court approving the Agreement.

19. **“Howard Counsel”** means the law firm Crowell & Moring LLP.

20. **“In Camera Supplement”** means the agreement containing certain confidential terms allowing termination of the Settlement Agreement that will be submitted *in camera* to the Court.

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

22. **“Net Settlement Fund”** means the Settlement Fund less any (i) Administration Expenses; (ii) Fee and Expense Award; and (iii) Class Representative Award.

23. **“Notice”** means the notice of this Agreement that is to be sent to the Settlement Class in the manner set forth in this Agreement consistent with the requirements of due process and Federal Rule of Civil Procedure 23, and which is substantially in the form of the attached Exhibits A-1 and A-2.

24. **“Notice and Administration Costs”** means the reasonable and authorized costs and expenses of providing notice in accordance with the Preliminary Approval and any other orders of the Court, including without limitation the cost of providing Notice and all reasonable and authorized costs and expenses incurred in administering the Agreement.

25. **“Opt-Out”** means a member of the Settlement Class who properly and timely submits a request for exclusion from the Agreement pursuant to Section V.

26. **“Opt-Out List”** means the list compiled by the Claims Administrator pursuant to Section V.6.

27. **“Opt-Out and Objection Date”** means the date prescribed by Section V.1.

28. **“Preliminary Approval”** means the Court’s order or orders certifying the Settlement Class, directing notice to the Settlement Class, and preliminarily approving this Agreement and all exhibits under Federal Rule of Civil Procedure 23, where such approval is in substantially the same form as the proposed preliminary approval order filed simultaneously with this Agreement in the form of the attached Exhibit A.

29. **“Released Claims”** means any and all causes of action, suits, class actions, claims, liens, demands, judgments, costs, damages, obligations, and all other legal responsibilities in any form or nature, including without limitation all claims relating to or arising out of any state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way allegedly related to tuition, fees and/or costs paid or incurred by or on behalf of any Settlement Class Member, to any Released Party, in connection with the Spring 2020 Semester and Howard’s transition to remote instruction in response to the COVID-19 global pandemic, including without limitation all claims that were brought or could have been brought in the Action.

30. **“Released Parties”** means Howard and all of its present, future, and former officers, directors, trustees, academic affiliates, employees, faculty members, agents, representatives, attorneys, outside counsel, predecessors, successors, insurers, and assigns.

31. **“Releasing Parties”** means Plaintiff, Settlement Class Members, and all of their respective present or past heirs, executors, parents, family members, lenders, funders, payors (*i.e.*, any person who paid or incurred tuition and/or fees by or on behalf of Plaintiff or any Settlement Class Member, to any Released Party, in connection with the Spring 2020 Semester), estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors,

managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, trusts, limited liability companies, partnerships and corporations.

32. **“Settlement Amount”** means the amount of \$2,073,680 to be paid by or on behalf of Howard as consideration in full and total satisfaction of Howard’s monetary obligations under this Agreement.

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

34. **“Settlement Class”** means a class to be certified by the Court pursuant to this Agreement solely for the purpose of effectuating this Agreement, and defined as all Howard students enrolled in the Spring 2020 Semester who did not withdraw by March 16, 2020 for whom any amount of tuition and/or fees was paid to Howard from any source other than a scholarship, grant, or tuition remission from Howard, or any other source that did not require repayment, and whose tuition and/or fees have not been fully refunded. Excluded from the Settlement Class are (i) any students who received full scholarships or tuition remission from Howard or who did not themselves ultimately pay any tuition or fees for the Spring 2020 Semester (*i.e.*, those whose tuition and fees were paid for by institutional aid, tuition benefits, federal/state/local grants, GI/Yellow Ribbon benefits, outside scholarships, and/or third-party sponsorships); (ii) the University and its officers, trustees and their family members; (iii) Class Counsel; (iv) the Judge presiding over the Action; and (v) all persons who properly execute and file a timely opt-out request to be excluded from the Settlement Class.

35. **“Settlement Class Member”** means a person who comes within the definition of the Settlement Class. A Settlement Class Member who asks to be excluded from the Settlement pursuant to Section V below is no longer a Settlement Class Member.

36. **“Settlement Class Representative”** means Plaintiff Chanel Adavenaixx.

37. **“Settlement Fund”** means the qualified settlement fund created by Howard’s payments described in Section II and used to pay the monetary benefits to the Settlement Class Members, the Fee and Expense Award the Settlement Class Representative Award and the Claims Administrator’s expenses and costs as described in this Agreement. All disbursements from the Settlement Fund shall be pursuant to the terms and conditions set out in this Agreement or pursuant to the Court’s order.

38. **“Settlement Website”** means the website established by the Claims Administrator to aid in administering the Agreement.

39. **“Short Form Notice”** means the notice substantially in the form of the attached Exhibit A-1.

40. **“Spring 2020 Semester”** means the Spring 2020 academic semester at Howard that began on January 10, 2020 and ended on May 8, 2020.

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

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

43. **“Unsuccessful Electronic Payments”** means any electronic payments via Venmo or pre-paid Visa card that are not successfully received by a Settlement Class Member after a period of one hundred and eighty (180) days from the date the electronic payment to the Settlement Class Member was initiated.

44. Other capitalized terms in this Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

45. The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

I. SETTLEMENT CLASS CERTIFICATION

1. Howard agrees that, solely for the purposes of this Agreement and its implementation, it will not oppose certification of a Settlement Class as described in this Agreement. Settlement Class Members and Class Counsel agree that they will not otherwise use, suggest or offer for any purpose the fact that Howard did not oppose certification of the Settlement Class solely for purposes of this Agreement, including without limitation in the event that this Agreement is not consummated and finally approved.

2. Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, Class Counsel have concluded that this Agreement provides benefits to the Settlement Class Members and is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. The Parties and Class Counsel agree to recommend approval of this Agreement by the Court, and to support approval of this Agreement as fair, adequate, and

reasonable. Class Counsel further agree to undertake their best efforts, including all reasonable and proper steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to secure the Court's approval, and to oppose any appeals from or challenges to the Final Approval.

II. SETTLEMENT RELIEF

1. Within twenty-one (21) business days after Final Judgment, Howard shall pay into the Escrow Account the Settlement Amount, less any costs of Notice and Administration Costs that Howard already remitted by then to the Claims Administrator related to effectuating Notice pursuant to Section IV.

2. Howard's payment of the Settlement Amount shall be in full and total satisfaction of Howard's monetary obligations in this Agreement. Howard shall in no event be obligated to contribute any amounts, or make any payments, in excess of the Settlement Amount.

3. The Net Settlement Fund will be divided equally among Settlement Class Members so that each receives an equal payment. The equal payment for each Settlement Class Member will be calculated by dividing the Net Settlement Fund by the number of individuals in the Settlement Class, as determined by the Claims Administrator based on the Class List. Amounts that otherwise would be distributed to Settlement Class Members who properly execute and file a timely opt-out request to be excluded from the Settlement Class pursuant to Section V will instead be totaled and distributed among all participating Settlement Class Members.

4. Each Settlement Class Member's Settlement Benefit will be distributed to that Settlement Class Member upon the Claims Administrator's determination of entitlement, with no further action required by that Settlement Class Member to receive the Settlement Benefit.

5. Unless the Settlement Class Member takes one of the actions described in this paragraph below, the Claims Administrator will send the Settlement Benefit to each Settlement Class Member by check mailed by regular mail to the Settlement Class Member's last known mailing address on file with Howard's Office of Enrollment Management. The Claims Administrator will provide a form on the Settlement Website that Settlement Class Members may use to (i) provide an updated address for receipt of their check; or (ii) elect to receive the Settlement Benefit by Venmo or a pre-paid Visa card instead of a paper check. Settlement Class Members wishing to receive payment by alternate means (i) or (ii) of this paragraph must provide the required updated address or election no later than forty-five (45) days after the Effective Date.

6. The Claims Administrator will send the Settlement Benefit to Settlement Class Members within sixty (60) days of the Effective Date.

7. At the discretion of the Claims Administrator, Uncashed Settlement Checks and Unsuccessful Electronic Payments either (i) shall be redistributed as a second distribution to Settlement Class Members who did not cash their checks or did not successfully receive a Venmo payment or pre-paid Visa card; or (ii) if the expense of making a second distribution is more than the total amount of the Uncashed Settlement Checks and Unsuccessful Electronic Payments, the total amount of the Uncashed Settlement Checks and Unsuccessful Electronic Payments, as well as any other amounts in excess of the payments and reimbursements set forth in this Agreement, shall fund either a specially authorized Howard scholarship fund or a charitable cause as agreed upon by the Parties.

III. RELEASE AND COVENANT NOT TO SUE

1. Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released,

relinquished, and discharged all Released Claims against each and every one of the Released Parties and their respective heirs, executors, administrators, predecessors, successors, insurers and assigns.

2. With respect to the Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, they shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or the releasing party.

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

4. Settlement Class Members shall not commence, prosecute, or cause to be commenced or prosecuted, any action or other proceedings against any Released Parties, or with

regard to the asserted conduct of any Released Parties, based upon any Released Claims. If any Settlement Class Member has assigned, sold, or otherwise transferred any Released Claims of any kind, then said transferee is bound to this Settlement.

IV. CLASS NOTICE

1. Within sixty (60) days of the execution of this Agreement, or within fourteen (14) days of entry of the Preliminary Approval, whichever time period is shorter, Howard will provide the Claims Administrator a list from then-available records of Howard's Office of Enrollment Management that includes, where available, the names and last known email and postal addresses of each Settlement Class Member (the "Class List").² The Class List will be provided to the Claims Administrator for the sole purpose of the Claims Administrator performing its obligations pursuant to the Agreement, and shall not be used by any individual or entity other than Howard for any other purpose at any time.

2. Within thirty (30) days of entry of the Preliminary Approval, or such other time period as the Court orders, the Claims Administrator shall send the Short Form Notice by email to persons listed on the Class List. If an email address is not available for a Settlement Class Member, the Claims Administrator shall send the Short Form Notice within the same timeframe by regular mail to the Settlement Class Member's last known mailing address.

² Consistent with the requirements of FERPA and Howard's policies, Howard may disclose directory information to the Claims Administrator. *See* 34 C.F.R. § 99.37; *FERPA – Family Educational Rights and Privacy Act*, Howard University, <https://howard.edu/registrar/FERPA> (providing public notice that student names, addresses, and email addresses constitute directory information and providing notice of how students may restrict the disclosure of such information). Moreover, any order granting preliminary or final approval of the Settlement shall constitute a judicial order within the meaning of FERPA, *see* 34 C.F.R. § 99.31(a)(9)(i), and the Settlement and the Court's order shall constitute specific notice of Howard's intention to comply with that order, *see* 34 C.F.R. § 99.31(a)(9)(ii). The Class List shall not include information subject to an unrescinded FERPA Block. Howard shall send Notice to members of the Settlement Class whose name, mailing address, and/or email address are subject to a FERPA Block.

3. The Short Form Notice shall advise Settlement Class Members of their rights under the Agreement, including the right to be excluded from and to object to the Agreement. The Short Form Notice shall also inform Settlement Class Members that they can access the Long Form Notice on the Settlement Website, which Long Form Notice shall advise the Settlement Class Members of the procedure for requesting exclusion from the Agreement pursuant to Section V and for objecting to the Agreement pursuant to Section VI.

4. No later than ten (10) days after entry of the Preliminary Approval, and before issuance of the Short Form Notice, the Claims Administrator shall establish the Settlement Website. The Settlement Website will enable Settlement Class Members to provide an updated mailing address to receive a paper check or to elect to receive their Settlement Benefit via Venmo or a pre-paid Visa card. The Settlement Website shall at a minimum include, in downloadable format, (i) the Long Form Notice; (ii) the Preliminary Approval; (iii) the Agreement (other than the *In Camera* Supplement), including all of its exhibits; and (iv) any other materials agreed upon by the Parties and/or required by the Court.

5. If the Notice described in the preceding paragraph 4 does not achieve a minimum level of 70% reach, or is not approved by the Court as complying with all Due Process requirements, the Parties, in conjunction with the Claims Administrator, shall develop and seek approval by the Court of such supplemental notice as is necessary to achieve a minimum level of 70% reach or satisfy the Court that all Due Process requirements are satisfied. Such additional notice, if necessary, shall be funded from the Settlement Fund with no additional financial contribution by Howard.

6. Notice required by the Class Action Fairness Act, 28 U.S.C. § 1715, will be provided to the appropriate federal and state officials by the Claims Administrator on behalf of Howard.

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

V. REQUESTS FOR EXCLUSION

1. A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Claims Administrator to the address provided in the Long Form Notice, postmarked no later than ninety-five (95) days after entry of the Preliminary Approval (the “Opt-Out and Objection Date”), which date shall be included in both the Long Form Notice and Short Form Notice.

2. A written request for exclusion must:

- (a) include a statement requesting exclusion from the Settlement Class;
- (b) be personally signed by the Settlement Class Member; and
- (c) include the Settlement Class Member’s name, address, telephone number, and email address, and the caption of the Action.

3. A request to be excluded from the Settlement Class shall be invalid if it does not include all information specified in this Section V, and/or is sent to an address other than that designated in the Long Form Notice, and/or is not postmarked within the time specified in the preceding paragraph 1. Those submitting invalid requests for exclusion shall be deemed to remain

in the Settlement Class and shall be bound as Settlement Class Members by the Agreement provided the Agreement is approved by the Court.

4. Any Settlement Class Member who validly elects to be excluded from the Settlement Class per this Section shall not be bound by the Final Judgment, not be entitled to relief under the Agreement, not gain any rights by virtue of the Agreement, and not be permitted to object to any aspect of the Agreement.

5. A request to be excluded from the Settlement Class must be personal to the requesting individual. No Settlement Class Member may exclude other Settlement Class Members from the Settlement Class.

6. The Claims Administrator, within seven (7) days following the Opt-Out and Objection Date, shall prepare and provide copies of the Opt-Out List to Class Counsel and Howard Counsel.

7. Howard has the right in its sole discretion to audit the exclusion process for accuracy of submission, error, and otherwise. The Court will be the final arbiter of an exclusion's validity.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

1. Any Settlement Class Member may object to the Settlement, the Fee and Expense Award and/or the Class Representative Award.

2. Any Settlement Class Member wishing to object must file a written objection with the Clerk of Court, or through the Court's electronic case filing system if the objection is from a Settlement Class Member represented by counsel, such that the objection is postmarked no later than the Opt-Out and Objection Date, with a copy sent concurrently by mail, hand, or overnight delivery service to Class Counsel and Howard Counsel at the addresses set forth in Section XIII.13.

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

4. Any Settlement Class Member who does not file a timely and valid written objection with the Court, and/or a timely and valid notice of their intent to appear at the Final Approval Hearing in accordance with this Section VI and as detailed in the Long Form Notice, shall not be permitted to object to the Settlement Amount, the Fee and Expense Award, and/or the Class Representative Award at the Final Approval Hearing; shall be foreclosed from seeking any Court review of the Agreement, the Class Representative Award, and/or the Fee and Expense Award by appeal or other means; and shall be deemed to have waived any objections and be forever barred from making any such objections in the Action or any other related action or proceeding.

VII. CLAIMS ADMINISTRATOR

1. The Claims Administrator shall administer the Agreement under the supervision of the Court.
2. The Claims Administrator shall:

- (a) send Short Form Notice to the Settlement Class Members;
 - (b) establish the Settlement Website;
 - (c) serve as Escrow Agent for the Settlement Fund;
 - (d) send Class Counsel and Howard Counsel all documents and other materials received in connection with the administration of the Settlement promptly upon receipt;
 - (e) receive requests for exclusion, objections, and other requests from the Settlement Class Members and promptly provide a copy of such requests to Class Counsel and Howard Counsel upon receipt, including any requests received after the Opt-Out and Objection Date;
 - (f) provide at least weekly reports to Class Counsel and Howard Counsel, including without limitation reports regarding any requests for exclusion received;
 - (g) make available for inspection by Class Counsel and Howard Counsel all documentation related to the Settlement submitted to the Claims Administrator, and any correspondence related to the Agreement sent or received by the Claims Administrator, at any time upon reasonable notice;
 - (h) provide reports and other information to the Court as the Court may require;
- and
- (i) undertake other administrative tasks in furtherance of this Agreement in a rational, responsive, cost effective, and timely manner.

3. In the exercise of its duties specified in this Agreement, the Claims Administrator shall have the right to reasonably request additional information from Class Counsel, Howard Counsel, or any Settlement Class Member.

4. The Claims Administrator shall maintain in confidence the Class List and the identity and mailing addresses of the Settlement Class Members. The Parties agree that this information may not be used by the Claims Administrator for any purpose other than effectuating the terms of the Agreement or the duties or obligations arising under this Agreement.

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

6. Howard, the Released Parties, and Howard Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) allocation of the Settlement Fund to Settlement Class Members or the implementation, administration, or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; and/or (vi) the payment or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

VIII. PRELIMINARY APPROVAL AND FINAL JUDGMENT

1. No later than fourteen (14) days after execution of the Agreement, in coordination with Howard Counsel, Class Counsel will move for preliminary approval of the Agreement,

provisional certification of the Settlement Class for settlement purposes only, appointment of Plaintiff as Settlement Class Representative, appointment of Class Counsel as counsel for the Settlement Class, and the scheduling of the Final Approval Hearing. Concurrently with their filing of the motion for preliminary approval, Class Counsel shall apply to the Court for, and Howard shall agree to, entry of the proposed Preliminary Approval, substantially in the form of the attached Exhibit A.

2. Concurrently with submission to the Court of the Agreement pursuant to this Section, Class Counsel shall request that the Court hold a Final Approval Hearing, which shall be held no less than ninety (90) days after the Short Form Notice is disseminated, unless the Court orders otherwise.

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

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

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

(c) incorporate the releases set forth above, make the releases effective as of the Effective Date, and forever discharge the Released Parties as set forth in this Agreement;

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

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

(f) award the Settlement Class Representative from out of the Settlement Fund such Class Representative Award as the Court may allow; and

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

IX. USE OF SETTLEMENT FUND

1. The Settlement Fund shall be used to pay: (i) any Administration Expenses reasonably incurred by the Settlement Administrator in carrying out the duties specified in the Agreement; (ii) any Fee and Expense Award granted by the Court; and (iii) any Class Representative Award granted by the Court. Funds remaining in the Settlement Fund after the payments enumerated above shall be deemed “the Net Settlement Fund,” and shall be distributed to Settlement Class Members according to Section II.3.

2. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed as provided for in this Agreement.

3. The Settlement Fund shall be under the control of the Claims Administrator and its agents, on behalf of the Settlement Class Representative, the Settlement Class, and Howard. The Claims Administrator and its agents shall cause the Settlement Fund to be invested exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments), except that any cash balances up to the amount that is insured by the FDIC may be deposited in any account

that is fully insured by the FDIC. The Claims Administrator shall cause all interest on the Settlement Fund to be collected and reinvested. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held in the Settlement Fund may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held in the Settlement Fund may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. The Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Claims Administrator and its agents. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund.

4. The costs of administering and maintaining the Settlement Fund shall be paid from the Settlement Amount, and any and all interest generated by the Settlement Fund shall be added to the Settlement Amount.

5. The Settlement Fund is intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Claims Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. The Claims Administrator shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Parties shall not have any liability or responsibility for any such Taxes. Upon written request, Howard will provide to the Claims Administrator the statement described in Treasury Regulation § 1.468B-3(e). The Claims Administrator, as administrator of the Settlement Fund within the meaning of

Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

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

7. This Agreement is not a claims-made settlement. As of the Effective Date, all rights of Howard in or to the Settlement Fund shall be extinguished except as otherwise provided by this Agreement.

8. Prior to the Effective Date, no disbursements shall be made out of the Settlement Fund except: (a) upon order of the Court; or (b) as provided in the Agreement. Prior to the Effective Date, Howard shall pay the Claims Administrator any Administration Expenses actually incurred and paid or payable, which shall not exceed \$150,000. If, prior to the Effective Date, Administration Expenses exceed \$150,000, such additional amounts shall be paid by Howard only upon and after approval by both Class Counsel and Howard Counsel, which approval shall not be unreasonably withheld. Any such payments to the Claims Administrator for Administration Expenses shall reduce the amount to be paid by Howard into the Escrow Account pursuant to Section II.1. After the Effective Date, the Claims Administrator may pay from the Settlement

Fund any additional, unpaid Administration Expenses only after approval by both Class Counsel and Howard Counsel. The Released Parties are not responsible for, and shall not be liable for, any Administration Expenses.

9. If the Effective Date does not occur, or if the Agreement is voided, terminated, or cancelled, the Settlement Class Representative and Class Counsel shall have no obligation to repay any of the Administration Expenses that have been paid or reasonably incurred. Any amounts remaining in the Net Settlement Fund, including all interest earned on the Net Settlement Fund, shall be returned to Howard. No other person or entity shall have any further claim whatsoever to such amounts.

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

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

12. The Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to distribution of the Net Settlement Fund, the payment or withholding of Taxes, the Escrow Account, the Escrow Agent, the Claims Administrator, Administration Expenses, or any losses incurred in connection with the foregoing. No person, including the

Settlement Class Representative, Settlement Class Members, or Class Counsel, shall have any claim of any kind against the Released Parties with respect to the matters set forth in this paragraph.

X. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE AWARD

1. The Parties agreed to all substantive terms of this Agreement prior to reaching any agreement concerning a Fee and Expense Award.

2. No later than fourteen (14) days prior to the Opt-Out and Objection Date, Class Counsel will apply to the Court for an award of attorneys' fees to be paid from the Settlement Fund, not to exceed one-third of the Settlement Fund, as well as reimbursement of litigation expenses incurred through the date of the application, plus a reasonable estimate of additional expenses likely to be incurred through the Effective Date ("Fee and Expense Award").

3. Class Counsel's fee and expense petition shall comply in all respects with the requirements of Federal Rule of Civil Procedure 23(h).

4. The amount of the Fee and Expense Award shall be determined by the Court based on the petition from Class Counsel. Class Counsel has agreed, with no consideration from Howard, to limit their request for attorneys' fees to no more than one-third of the Settlement Fund. Payment of the Fee and Expense Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Settlement Fund. The Parties agree that any award of attorneys' fees and expenses is committed to the sole discretion of the Court within the limitations set forth in this paragraph.

5. The Fee and Expense Award shall be paid to Class Counsel from out of the Settlement Fund within thirty (30) days after entry of Final Judgment, subject to paragraph 8 below.

6. Upon payment of the Fee and Expense Award, Class Counsel shall release and forever discharge the Released Parties from any claims, demands, actions, suits, causes of action, or other liabilities relating to any attorneys' fees, costs, or expenses incurred in the Action. Class Counsel agree that any federal, state, municipal, or other taxes, contributions, or withholdings that may be owed or payable by them, or any tax liens that may be imposed, on the sums paid to them pursuant to this paragraph are their sole and exclusive responsibility, and any amount required to be withheld for tax purposes (if any) will be deducted from those payments.

7. The Settlement Class Representative may seek, and the Court may award, a reasonable Class Representative Award for her service in the case not to exceed Five Thousand Dollars (\$5,000), which award shall be paid from the Settlement Fund. This shall be in addition to any Settlement Benefit that Settlement Class Representative may receive as a Settlement Class Member. If the Court approves a request for a Class Representative Award, the Claims Administrator will distribute the Class Representative Award to the Settlement Class Representative along with her Settlement Benefit no later than sixty (60) days after the Effective Date.

8. In the event that the Fee and Expense Award is vacated, modified, reversed, or rendered void as the result of any appeal, further proceedings on remand, or successful collateral attack, Class Counsel shall repay to the Settlement Fund the amount of the Fee and Expense Award reversed, vacated, or modified, including any accrued interest. Class Counsel shall make the appropriate refund or repayment in full no later than twenty-one (21) days after: (a) receiving from Howard Counsel notice of the termination of the Agreement; or (b) any order reversing or modifying the Final Judgment, vacating the Final Judgment, or reducing or reversing the Fee and Expense Award has become Final.

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

XI. NO ADMISSION OF WRONGDOING

1. Neither the Agreement, nor any document referred to in this Agreement, nor any action taken to carry out the Agreement, is, may be construed as, or may be used as an admission by or against Howard or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

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

XII. TERMINATION

1. If the Court or any appellate court enters a final, non-appealable order altering this Agreement in a way that materially and adversely affects the Settlement Class or Howard, the affected Party may void the Agreement within ten (10) business days from the date that such order becomes final and non-appealable by giving written notice of intent to the other Parties and the Court to void the Agreement as provided in this Agreement. Notwithstanding the above, the Court's entry of Fee and Expense Award (as described in Section X) for an amount other than requested by Class Counsel shall not be grounds to void the Agreement. The only remedy in the event of a Fee and Expense Award below the amount requested shall be a separate appeal by Class Counsel of the attorneys' fees or expenses award provided by the Court, and such appeal shall be severable from Final Judgment as to the Settlement Class.

2. Howard shall have the absolute right, in its sole discretion, to terminate this Agreement under the terms of the *In Camera* Supplement. To terminate this Agreement, Howard must provide notice of termination of this Agreement in the manner provided in the *In Camera* Supplement within ten (10) business days after receipt of the Opt-Out List as described in Section V.6. All Parties and counsel agree to maintain the confidentiality of the *In Camera* Supplement at all times and agree to take such steps as may be necessary to accomplish this.

3. The Parties agree that if final approval of the Agreement is not achieved, or the Agreement is terminated and voided, the Agreement and all proceedings had in connection with the Agreement shall be without prejudice to the *status quo ante* rights of the Parties, and the Parties further agree to jointly move the Court to vacate all orders issued pursuant to the Agreement and to vacate certification of the Settlement Class.

XIII. MISCELLANEOUS PROVISIONS

1. The Agreement will be executed by Class Counsel and Howard's President and Chief Financial Officer on behalf of the Parties. All counsel executing the Agreement represent and warrant that they are authorized and empowered to execute the Agreement on behalf of their clients, and that the signature of such counsel is intended to and does legally bind the clients of such counsel.

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

3. All of the exhibits attached to this Agreement are hereby incorporated by this reference as though fully set forth in the Agreement. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of the Agreement, *the In Camera* Supplement, and the terms of any exhibit, the terms of the Agreement shall prevail.

4. The Agreement may be amended or modified only by a written instrument signed by or on behalf of the Settlement Class Representative and Howard or their successors-in-interest, except to the extent that any modification would be inconsistent with any order by the Court.

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

6. The headings in this Agreement are used for the purpose of convenience only and are not meant to have legal effect.

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

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

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

10. The construction, interpretation, operation, effect, and validity of the Agreement and its exhibits shall be governed by and interpreted according to the laws of the District of Columbia, without regard to conflicts of laws, except to the extent federal law requires that federal law govern.

11. Any action arising under or to enforce the Agreement or any portion of the Agreement shall be commenced and maintained only in this Court.

12. The Parties and their counsel agree to use their best efforts, and to take all reasonable steps necessary, to obtain the entry of the Final Judgment, and to effectuate the Agreement. Any such actions taken by the Parties, and any actions taken by the Parties to comply with the Agreement, will be in accordance with federal, state, and/or local law, including but not limited to FERPA.

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

If to the Settlement Class Representative
or Class Counsel:

Gainey McKenna & Egleston
Attn: Thomas J. McKenna, Esq.
260 Madison Avenue, 22nd Floor
New York, NY 10016
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gme-law.com

Bursor & Fisher, P.A.
Attn: Timothy Fisher, Esq.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: ltfisher@bursor.com

If to Howard:

Crowell & Moring LLP
Attn: Tracy A. Roman, Esq.
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
Email: troman@crowell.com

14. The Parties intend the Agreement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Representative and any other Settlement Class Member against the Released Parties with respect to the Released Claims. Accordingly, Settlement Class Representative and her counsel, and Howard and its counsel, agree not to assert in any forum that this Action was brought or defended in bad faith or without a reasonable basis. The Parties agree that the amounts paid and the other terms of the Agreement were negotiated at arm's length and in good faith by the Parties, and reflect agreement that was reached voluntarily after extensive negotiations with the aid of a neutral mediator and consultation

with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

15. The Parties are not precluded from making statements or responding to press or other inquiries about the settlement and this Agreement, so long as all statements are consistent with the terms of the Agreement. Class Counsel are permitted, in connection with their law firm websites, biographies, brochures, and firm marketing materials, future declarations regarding counsel's experience, and/or in speaker biographies, to state that it served as counsel in this Action and to communicate basic facts about the settlement and this Agreement, including the Settlement Fund amount.

16. All persons involved in the settlement will be required to keep confidential any personal identifying information of Settlement Class Members, and any otherwise nonpublic financial information of Howard. Any documents or nonpublic information provided by Howard to Class Counsel must be destroyed within thirty (30) days of the Claims Administrator completing the issuance of all settlement payments, except insofar as Class Counsel shall have the right to retain any work product and, in the case of pleadings submitted to the Court, any exhibits to such pleadings.

17. Howard may communicate with Settlement Class Members in the ordinary course of its operations. Howard will refer inquiries regarding this Agreement and administration of the settlement to the Claims Administrator or Class Counsel.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, by themselves or their duly authorized attorneys, as of the date stated below.

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

CHANEL ADAVENAIXX

By: Chanel Adavenaixx
Chanel Adavenaixx, individually and as
representative of the Class

Dated: _____

HOWARD UNIVERSITY

By: _____
Ben Vinson III, PhD
President

By: _____
Stephen Graham
Chief Financial Officer

AGREED AS TO ALL OBLIGATIONS OF CLASS COUNSEL:

Dated: 4/30/24

GAINNEY MCKENNA & EGLESTON

By: Thomas J. McKenna
Thomas J. McKenna
Gregory M. Egleston
Christopher M. Brain
260 Madison Ave., 22nd Floor
New York, NY 10016
Telephone: (212) 983-1300
tjmckenna@gme-law.com

Dated: _____

BURSOR & FISHER, P.A.

By: _____
L. Timothy Fisher
Neal J. Deckant
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
ndeckant@bursor.com

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

CHANEL ADAVENAIXX

By: _____
Chanel Adavenaixx, individually and as representative of the Class

Dated: May 6, 2024

HOWARD UNIVERSITY DocuSigned by:
Ben Vinson, III
C644099844114C1...
By: _____
Ben Vinson III, PhD
President

DocuSigned by:
Stephen Graham
3FE29ED24D9D429...
By: _____
Stephen Graham
Chief Financial Officer

AGREED AS TO ALL OBLIGATIONS OF CLASS COUNSEL:

Dated: _____

GAINNEY McKENNA & EGLESTON

By: _____
Thomas J. McKenna
Gregory M. Egleston
Christopher M. Brain
260 Madison Ave., 22nd Floor
New York, NY 10016
Telephone: (212) 983-1300
tjmckenna@gme-law.com

Dated: _____

BURSOR & FISHER, P.A.

By: _____
L. Timothy Fisher
Neal J. Deckant
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
ndeckant@bursor.com

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

CHANEL ADAVENAIXX

By: _____
Chanel Adavenaixx, individually and as
representative of the Class

Dated: _____

HOWARD UNIVERSITY

By: _____
Ben Vinson III, PhD
President

By: _____
Stephen Graham
Chief Financial Officer

AGREED AS TO ALL OBLIGATIONS OF CLASS COUNSEL:

Dated: _____

GAINNEY McKENNA & EGLESTON

By: _____
Thomas J. McKenna
Gregory M. Egleston
Christopher M. Brain
260 Madison Ave., 22nd Floor
New York, NY 10016
Telephone: (212) 983-1300
tjmckenna@gme-law.com

Dated: 4/30/24

BURSOR & FISHER, P.A.

By: 
L. Timothy Fisher
Neal J. Deckant
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
ndeckant@bursor.com

EXHIBIT A-1

Notice of Proposed Class Action Settlement

Adavenaixx v. Howard University, Case No. 1:23-cv-00663-DLF

(United States District Court for the District of Columbia)

If you were enrolled in a Howard University Undergraduate or Graduate Program during the Spring 2020 Semester, you may be entitled to a cash payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer. Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

- A \$2,073,680 settlement has been reached in a class action lawsuit filed against Howard University (“Howard” or the “University”). The lawsuit claimed that University students paid tuition and fees in exchange for in-person instruction, services, and activities during the Spring 2020 Semester and were entitled to partial refunds based on the University’s transition to remote instruction beginning in March 2020 in response to the COVID-19 pandemic. The University denies all allegations, maintains that it transitioned to remote instruction to protect the health of its students, faculty and staff and in compliance with mandatory government shutdown orders, and settled this lawsuit to avoid further litigation. The Court has not decided who is right.
- If you were enrolled in a University Undergraduate or Graduate Program during the Spring 2020 Semester, and did not withdraw by March 16, 2020, you may be eligible for a cash payment. Cash payments will be shares of the Net Settlement Fund divided equally among Settlement Class Members.
- Definitions for terms used in this Notice can be found in this Notice and in the Settlement Agreement available at www.HUCovidSettlement.com.
- Your legal rights are affected whether or not you act. *Please read this Notice carefully.*

YOUR RIGHTS AND CHOICES		DEADLINE
Do Nothing	You will receive your cash payment by check at the address the University has on file for you.	
Provide Your Preferred Form of Payment or Update Your Address	Submit a request that your cash payment be sent to a different address or by Venmo or pre-paid Visa card at www.HUCovidSettlement.com .	Provide Your Preferred Form of Payment or Update Your Address by: Month DD, 2024
Exclude Yourself (Opt Out)	Get no cash payment but keep any right you may have to file your own lawsuit against the University about the legal claims in this lawsuit.	Request Exclusion by: Month DD, 2024
Object	Tell the Court why you do not like the proposed Settlement. If the Settlement is approved, you will still be bound by the Settlement, and you may still receive a cash payment.	File an Objection by: Month DD, 2024

Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

Attend a Hearing	Ask to speak in Court about why you object to the proposed Settlement. The Final Approval Hearing is Month DD, 2024 .	File Notice of Appearance by: Month DD, 2022
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- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this lawsuit still has to decide whether to approve the Settlement. The Settlement is referred to in this Notice as both “the Settlement” and “the “proposed Settlement” for this reason.
- Cash payments will be sent to Settlement Class Members if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

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3. What is a class action?
4. Why is there a Settlement?

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6. What does the Settlement provide?
7. What can I get from the Settlement?

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8. How can I get my cash payment?
9. When will I receive my cash payment?
10. What am I giving up to receive these Settlement benefits?

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YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT PAGE ____

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YOUR RIGHTS – APPEARING AT THE FINAL APPROVAL HEARING PAGE ____

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to attend the Final Approval Hearing?
19. May I speak at the Final Approval Hearing?

Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

20. What happens if I do nothing at all?

GETTING MORE INFORMATION..... PAGE ____

21. Are there more details about the Settlement?

22. How do I get more information?

BASIC INFORMATION

1. Why should I read this Notice?

A Court has preliminarily established, or “certified,” this lawsuit as a class action lawsuit for purposes of settlement.

This Notice explains the class action lawsuit, the proposed Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get the benefits. If you are a Settlement Class Member, you have legal rights and options before the Court decides whether to give final approval to the proposed Settlement. This Notice explains all of these things. For the precise terms and conditions of the proposed Settlement, please review the Settlement Agreement, available at www.HUCovidSettlement.com.

The Court in charge of this lawsuit is the United States District Court for the District of Columbia. The lawsuit is known as *Adavenaixx v. Howard University*, Case No. 1:23-cv-00663-DLF.

2. What is this lawsuit about?

This lawsuit asserts claims for breach of implied contract and unjust enrichment.

The lawsuit alleges that University students paid tuition and fees in exchange for in-person instruction, services, and activities during the Spring 2020 Semester and were entitled to partial refunds based on the University’s transition to remote instruction beginning in March 2020 in response to the COVID-19 pandemic. The University denies all allegations and maintains that it transitioned to remote instruction to protect the health of its students, faculty and staff and in compliance with mandatory government shutdown orders. The Court has not decided who is right.

3. What is a class action?

In a class action lawsuit, one or more persons or entities sue on behalf of other persons who have similar claims. The people together are a “Settlement Class” or “Settlement Class Members.” In this lawsuit, the person who sued is called the “Class Representative.” The entity the Class Representative is suing, Howard University, is called the “Defendant.” One court resolves the issues for everyone in the Settlement Class, except for those people who choose to exclude themselves (opt out) from the Settlement Class.

4. Why is there a Settlement?

The Court has not decided in favor of the Class Representative or the University. Instead, both sides agreed to a Settlement. By agreeing to settle, both sides avoid the cost and risk of a trial, and all Settlement Class Members as defined in this Notice and in the Settlement Agreement will receive a cash payment. The Class Representative and Class Counsel believe the Settlement is best for the Settlement Class and represents a fair, reasonable and adequate resolution of the lawsuit.

The University denies the claims in the lawsuit; denies all allegations of wrongdoing, fault, liability or damage to the Class Representative and the Settlement Class; and denies that it acted improperly or wrongfully in any way. The University nevertheless recognizes the expense and time that would be required to defend the lawsuit through trial and has taken this into account in agreeing to this Settlement.

Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits, you first have to determine if you are a Settlement Class Member.

5. Am I part of the Settlement?

You are a Settlement Class Member if you were enrolled in any of Howard University's Undergraduate and Graduate Programs during the Spring 2020 Semester, did not withdraw by March 16, 2020, and paid, or had paid on your behalf, any amount of tuition and/or fees for the Spring 2020 Semester which has not been fully refunded. A Settlement Class Member who asks to be excluded from the Settlement, as described in Number 13 below, is no longer a Settlement Class Member.

Undergraduate and Graduate Programs means all undergraduate, professional and postgraduate programs.

Excluded from the Settlement are: (i) any students who received full scholarships or tuition remission from Howard or who did not themselves ultimately pay any tuition or fees for the Spring 2020 Semester (i.e., those whose tuition and fees were paid for by institutional aid, tuition benefits, federal/state/local grants, GI/Yellow Ribbon benefits, outside scholarships, and/or third-party sponsorships); (ii) the University and its officers, trustees and their family members; (iii) Class Counsel; (iv) the judge who presided over the Action; and (v) all persons who properly execute and file a timely opt-out request to be excluded from the Settlement Class.

If you are unsure whether you are included, you can call or email the Claims Administrator at 1-888-325-1928 or info@HUCovidSettlement.com.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the Settlement provide?

The \$2,073,680 Settlement Amount will provide cash payments to all Settlement Class Members. Notice and administration costs, attorneys' fees and expenses, and an award to the Class Representative will also be paid out of the Settlement Amount, if approved by the Court.

7. What can I get from the Settlement?

Cash Payment: If you are a Settlement Class Member, you are eligible to receive a cash payment. Your cash payment will be an equal share of the Net Settlement Fund.

If any unclaimed funds remain in the Net Settlement Fund after the initial cash payments are distributed, at the discretion of the Claims Administrator, either (i) a second attempt will be made to distribute cash payments to Settlement Class Members who did not cash their checks or who did not successfully receive an electronic payment via the first distribution of cash payments; or (ii) these unclaimed funds shall help fund a specially authorized Howard scholarship fund or a charitable cause as agreed upon by the Parties.

HOW TO GET BENEFITS FROM THE SETTLEMENT

8. How can I get my cash payment?

If you are a Settlement Class Member and you do nothing, you will receive a cash payment via check at the address the University has on file for you. If you wish to receive your cash payment at an address different than the one on file with the University or in a format (either by Venmo or a pre-paid Visa card) other than paper check, you must submit your updated address and/or preferred form of payment at www.HUCovidSettlement.com by **Month DD, 20YY**.

You do not need to provide any information to receive your cash payment. The Court has issued an order permitting the University, under the Family Educational Rights and Privacy Act (“FERPA”), to disclose to the Claims Administrator the last known email address and mailing address the University has on file for each Settlement Class Member. You have the option to request that Howard’s Registrar not disclose your name, email address or mailing address.

9. When will I receive my cash payment?

The Court will hold a hearing on **Month DD, 2024**, at **_:___.m.** (which is subject to change), to decide whether to finally approve the proposed Settlement. Even if the Court finally approves the proposed Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. You will not receive a cash payment until any appeals are resolved. Please be patient.

10. What am I giving up to receive these Settlement benefits?

Unless you exclude yourself (opt out) from the Settlement Class by timely submitting a request for exclusion from the Settlement Class, you will remain in the Settlement Class, and that means you cannot sue, continue to sue or be part of any other lawsuit against the University about the legal claims and issues in this lawsuit. This is known as a release. The Release is defined and detailed in the Settlement Agreement, which is available at www.HUCovidSettlement.com. It also means that all of the Court’s orders in this lawsuit regarding the Settlement will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

11. Do I have lawyers in this lawsuit?

The Court has appointed attorneys from the law firms Gainey McKenna & Egleston and Bursor & Fisher, P.A. to represent you and the other Settlement Class Members. The lawyers are called Class Counsel. They are experienced in handling similar class action lawsuits. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

You may contact Class Counsel if you have any questions about this Notice or the Settlement. ***Please do not contact the Court.***

Thomas J. McKenna Gregory M. Egleston GAINNEY MCKENNA & EGLESTON 260 Madison Avenue, 22nd Floor New York, NY 10016	L. Timothy Fisher Neal J. Deckant BURSOR & FISHER, P.A. 1990 North California Boulevard, Suite 940 Walnut Creek, CA 94596
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Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

Tel: (212) 983-1300 Email: TJMcKenna@gme-law.com egleston@gme-law.com	Tel: (925) 300-4455 Email: ltfisher@bursor.com ndeckant@bursor.com
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12. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees up to one-third (1/3) of the \$2,073,680 million Settlement Fund, and in addition to fees, will seek reimbursement of litigation expenses incurred through the Effective Date. Any award of attorneys' fees and costs will be paid from the Settlement Amount. Class Counsel will also ask the Court for an award of no more than \$5,000 for the Class Representative. The purpose of the Class Representative Award is to compensate the Class Representative for their time, efforts, and risks taken on behalf of the Settlement Class. Any Class Representative Award payment to the Class Representative will be paid from the Settlement Amount. The Court may award less than these amounts. Class Counsel's Motion for attorneys' fees and expenses will be available at www.HUCovidSettlement.com once it has been filed.

YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do *not* want a cash payment, and want to keep the right to sue or continue to sue the University on your own about the legal issues in this lawsuit, then you must take steps to exclude yourself from the Settlement (get out of the Settlement). This is called “excluding yourself”—or is sometimes referred to as “opting out” of the settlement class.

13. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a written “request for exclusion” that includes the following:

- A statement requesting exclusion from the Settlement Class;
- A personal signature from you, the Settlement Class Member; and
- Your name, address, telephone number, email address, and the caption of the lawsuit.

Your request for exclusion must be mailed via U.S. Mail, **postmarked** by **Month DD, 20YY**, to:

Epiq Class Action & Claims Solutions, Inc.

PO Box 5926
Portland, OR 97228-5926

Only individual requests for exclusion are allowed. You may not submit a request to exclude other Settlement Class Members from the Settlement Class.

If you do not follow these procedures and deadlines, you will remain a Settlement Class Member and lose any opportunity to exclude yourself from the Settlement. This means that your rights will be determined in this lawsuit by the Settlement Agreement if it receives final approval from the Court.

14. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you cannot receive a cash payment. However, you may sue, continue to sue, or be part of a different lawsuit against the University.

Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

15. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. You cannot ask the Court for a different settlement; the Court can only approve or reject the Settlement. If the Court does not approve the Settlement, no cash payments will be sent out, and the lawsuit will continue.

To object, you must file a written objection with the Court, which includes the following information:

- A statement confirming that you are a Settlement Class Member;
- Your name, address, email address, and telephone number;
- A personal signature from you, the Settlement Class Member;
- A statement that identifies the substance of all objections, states whether each objection applies to only you, to a subset of the Settlement Class, or the entire Settlement Class, and provides the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents you rely upon); and
- A statement whether you intend to appear and seek to be heard at the Final Approval Hearing, with or without counsel.

You must file your objection with the Clerk of Court such that it is postmarked by **Month DD, 2024** (or through the Court's electronic case filing system by **Month DD, 2024** if you are represented by a lawyer). Your objection (including all documents you rely upon) also must be sent concurrently by mail, hand or overnight delivery service to the Claims Administrator, Class Counsel, and Howard Counsel at the addresses below:

Claims Administrator	Class Counsel	Howard Counsel
EPIQ CLASS ACTION & CLAIMS SOLUTIONS, INC. PO Box 5926 Portland, OR 97228-5926	Thomas J. McKenna Gregory M. Egleston GAINNEY MCKENNA & EGLESTON 260 Madison Avenue, 22nd Floor New York, NY 10017 L. Timothy Fisher Neal J. Deckant BURSOR & FISHER, P.A. 1990 North California Boulevard, Suite 940 Walnut Creek, CA 94596	Tracy A. Roman Scott L. Winkelman CROWELL & MORING LLP 1001 Pennsylvania Ave., N.W. Washington, D.C. 20004

If you file a timely objection, it will be considered by the Court at the Final Approval Hearing. You do not need to attend the Final Approval Hearing for the Court to consider your objection.

Questions? Call 1-888-325-1928, or Visit www.HUCovidSettlement.com

16. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement and do not want the Court to approve the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because you are no longer part of the lawsuit.

YOUR RIGHTS – APPEARING AT THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

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

The Court will hold a Final Approval Hearing at : .m. on **Month XX, 2024**, at the United States District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001 in Courtroom [_____].

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. If there are objections, the Court will consider them. You do not need to attend this hearing. You also do not need to attend to have an objection considered by the Court. After the hearing, the Court will decide whether to approve the Settlement and award the amount requested by Class Counsel for attorneys' fees and expenses and for the Class Representative Award. We do not know how long these decisions will take.

Note: The date and time of the Final Approval Hearing are subject to change by Court order. Any change will be posted at www.HUCovidSettlement.com. You should check the website to confirm that the date and/or time have not changed.

18. Do I have to attend the Final Approval Hearing?

No. Class Counsel will answer all questions the Judge may have. However, you are welcome to attend the hearing at your own expense. If you submit an objection, you do not have to attend the hearing to talk about your objection. As long as you postmarked your written objection by the deadline (or filed it through the Court's electronic case filing system by the deadline), the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the Final Approval Hearing?

If you wish to appear at the Final Approval Hearing and orally present your objection to the Court, your written objection must include your statement of intent to appear at the Final Approval Hearing. The Court will decide whether you will be heard orally.

YOUR RIGHTS – DO NOTHING

20. What happens if I do nothing at all?

If you fit the Settlement Class definition described above and do nothing, you will be part of the Settlement Class and you will receive a cash payment at the address the University has on file for you. Unless you request to exclude yourself from the Settlement, you will not be permitted to continue to assert claims about the issues in this lawsuit in any other lawsuit against the University unless the Settlement is not approved.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.HUCovidSettlement.com, or by contacting Class Counsel (see contact information in Question 11).

22. How do I get more information?

You can call toll-free 1-888-325-1928, write to PO Box 5926, Portland, OR 97228-5926; or go to www.HUCovidSettlement.com, where you will find answers to common questions about the Settlement, motions for approval of the Settlement and Class Counsel's request for attorneys' fees and expenses (once it is filed), and other important documents in the lawsuit.

You may also contact Class Counsel.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT**

EXHIBIT A-2

**LEGAL NOTICE BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

*A federal court authorized this Notice. This is
not a solicitation from a lawyer.*

**If you were enrolled in a Howard University
Undergraduate or Graduate Program during
the Spring 2020 Semester, and did not
withdraw by March 16, 2023, you may be
entitled to a cash payment from a proposed
class action settlement.**

This Notice is only a summary. It contains
information about a class action settlement.

More detailed information can be found at:

www.HUCovidSettlement.com

Questions? Call 1-888-325-1928.

**Check the website regularly for updates,
including about the scope of the Settlement
Class and terms of the Settlement.**

Howard University COVID-19 Settlement
c/o Settlement Administrator
Epiq Class Action & Claims Solutions, Inc.
PO Box 5926
Portland, OR 97228-5926

«ScanString»

Postal Service: Please do not mark barcode

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»

PRESORT FIRST
CLASS
POSTAGE
PAID
CITY/ZIP
PERMIT #####

What is this Notice about? A proposed Settlement has been reached in a lawsuit filed against Howard University (“Howard” or the “University”). The lawsuit claimed that University students paid tuition and fees in exchange for in-person instruction, services, and activities during the Spring 2020 Semester and were entitled to partial refunds based on the University’s transition to remote instruction beginning in March 2020 in response to the COVID-19 pandemic. The University denies these allegations, maintains that it transitioned to remote instruction to protect the health of its students, faculty and staff and in compliance with mandatory government shutdown orders. If approved by the Court, the Settlement resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? You may be a Settlement Class Member if you were enrolled in a Howard University Undergraduate or Graduate Program during the Spring 2020 Semester and did not withdraw by March 16, 2020, and paid, or had paid on your behalf, any amount of tuition and/or fees for the Spring 2020 Semester which has not been refunded.

Undergraduate and Graduate Programs means all undergraduate, professional, and postgraduate programs. Excluded from the Settlement Class are the following persons:

- (i) Any students who received full scholarships or tuition remission from Howard or who did not themselves ultimately pay any tuition or fees for the Spring 2020 Semester (*i.e.*, those whose tuition and fees were paid for by institutional aid, tuition benefits, federal/state/local grants, GI/Yellow Ribbon benefits, outside scholarships, and/or third-party sponsorships);
- (ii) The University and its officers, trustees and their family members;
- (iii) Class Counsel;
- (iv) The judge who presided over the Action; and
- (v) All persons who timely elect to become Opt-Outs from the Settlement Class in accordance with the Court’s orders

What can I get if I am a Settlement Class Member? The proposed Settlement creates a fund of \$2,073,680 to make cash payments to Settlement Class Members. Cash payments will be shares of the Net Settlement Fund divided equally among Settlement Class Members. **To receive this benefit, you need not do anything; a check will be sent via U.S. mail to the address the University has on file for you. If you would instead prefer a check payment to a different address or payment via Venmo or a pre-paid Visa card you must provide by [Date 45 days post Effective Date] an updated address or election to receive the cash payment by Venmo or a pre-paid Visa card. You can do so at www.HUCovidSettlement.com.** If you have any questions about how to adjust your payment method or address, call 1-888-325-1928 or email info@HUCovidSettlement.com.

What are my options? If you were enrolled in a Howard University Undergraduate or Graduate Program during the Spring 2020 Semester and did not withdraw by March 16, 2020, you can (1) do nothing and you will receive a check payment at the address the University has on file for you, (2) submit a request by [Date 45 days post Effective Date] that your check be sent to a different address or via Venmo or a pre-paid Visa card, (3) exclude yourself by [Opt-Out and Objection Date] or (4) object to the Settlement by [Opt-Out and Objection Date].

If you exclude yourself, you must do so with respect to all claims otherwise covered by this Settlement. You may not exclude yourself with respect to some but not all of these claims. If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court’s orders and judgments and will release your claims against the University about the issues in this case (including any that you have already initiated in any proceeding). For information on how to exclude yourself or object, visit www.HUCovidSettlement.com or call 1-888-325-1928.

What information is needed from me to participate? None. The Court has issued an order permitting the University, under the Family Educational Rights and Privacy Act (“FERPA”), to disclose to the Claims Administrator the email address and mailing address has on file for each Settlement Class Member. On or before [Opt-Out and Objection Date], you as a Class Member have the option to request that the Court withdraw its order requiring disclosure of your information.

What happens next? The Court, located in Washington, D.C., will hold a hearing on [Final Approval Hearing Date] at [Hearing Time] ET (or such other date as set by the Court) to decide whether to approve the Settlement, including how much to pay Class Counsel for their work in representing the Settlement Class and what award, if any, should be given to the Class Representative. You may attend this hearing, but you do not have to. If you filed a timely objection, you or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice. Please check www.HUCovidSettlement.com for updates.

Who represents me? The Court has appointed Thomas J. McKenna and Gregory M. Egleston of Gainey McKenna & Egleston (260 Madison Avenue, 22nd Floor New York, NY 10016 or 1-212-983-1300); and L. Timothy Fisher and Neal J. Deckant of Bursor & Fisher, P.A. (1990 N. California Blvd., Suite 940, Walnut Creek, CA 94596 or 1-925-300-4455) to represent you as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including the Settlement Agreement, Notice sent by email to Settlement Class Members, and Motion for Approval of Attorneys’ Fees and Expenses and Class Representative Award, call 1-888-325-1928 or visit www.HUCovidSettlement.com.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT A-3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHANEL ADAVENAIXX, individually
and on behalf of all similarly situated,

Plaintiff,

v.

HOWARD UNIVERSITY,

Defendant.

Civil Action No. 1:23-cv-00663-DLF

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff and Settlement Class Representative Chanel Adavenaixx (“Plaintiff” or “Class Representative,” and, collectively with the members of the Settlement Class, the “Settlement Class Members”), on the one hand, and Howard University (“Howard” or the “University”), on the other hand, have entered into a Class Action Settlement Agreement and Release entered into as of April [insert], 2024 (the “Settlement” or “Settlement Agreement”) to settle the above-captioned litigation (the “Action”). The Settlement Agreement, together with its exhibits incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the Action. Additionally, Class Counsel has filed a Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification, and Approval of Notice Plan Pursuant to Federal Rule of Civil Procedure 23(e)(1) (the “Motion”).¹

Having reviewed the Settlement Agreement and its exhibits, the Motion, the pleadings, and other papers on file in this action and statements of counsel, the Court finds that the Motion should

¹ Terms used herein shall have the meaning accorded to them in the Settlement Agreement except to the extent otherwise specified herein.

be GRANTED and that this Preliminary Approval Order should be entered. Terms and phrases used in this Preliminary Approval Order not otherwise defined herein shall have the same meanings ascribed to them in the Settlement Agreement.

NOW, THEREFORE, THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS THE FOLLOWING:

1. The Parties have agreed to a class action settlement of all Released Claims. Plaintiff seeks, and for purposes of settlement only the University does not object to, certification of a Settlement Class defined as follows:

All Howard students enrolled in the Spring 2020 Semester who did not withdraw by March 16, 2020 for whom any amount of tuition and/or fees was paid to Howard from any source other than a scholarship, grant, or tuition remission from Howard, or any other source that did not require repayment, and whose tuition and/or fees have not been fully refunded.

Specifically excluded from the Settlement Class are the following persons:

- (i) Any students who received full scholarships or tuition remission from Howard or otherwise were not obligated to make contributions, payments, or third-party arrangements towards tuition and/or fees for the Spring 2020 Semester (*i.e.*, those whose tuition and fees were paid for by institutional aid, tuition benefits, federal/state/local grants, GI/Yellow Ribbon benefits, outside scholarships and/or third-party sponsorships);
- (ii) The University and its officers, trustees and their family members;
- (iii) Class Counsel;
- (iv) The Judge presiding over the Action; and
- (v) All persons who properly execute and file a timely opt-out request to be excluded from the Settlement Class.

The Court expressly reserves the right to determine, should the occasion arise, whether Plaintiff's proposed claims may be certified as a class action for purposes other than settlement,

and the University hereby retains all rights to argue that Plaintiff's proposed claims may not be certified for class treatment except for settlement purposes.

2. For purposes of preliminary approval, this Court assesses the Settlement Agreement under Federal Rule of Civil Procedure 23(e). Under Rule 23(e)(1)(B), the Court "must direct notice in a reasonable manner" to proposed Settlement Class Members "if giving notice is justified by the parties' showing that the court will likely be able to (i) approve the proposal [as fair, reasonable, and adequate] under Rule 23(e)(2) and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). The Court recognizes that Howard's agreement to this Settlement Agreement is not an admission of any fault, wrongdoing, or liability and has made no findings of any fault, wrongdoing, or liability by Howard.

Likely Approval As Fair, Reasonable, And Adequate

3. To determine whether the Settlement Agreement is fair, reasonable, and adequate, Rule 23(e)(2) directs the Court to consider whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

4. The Class Representative is adequately representing the proposed Settlement Class: she shares the same alleged injury (that they allegedly paid tuition and fees in exchange for in-person instruction, services, and activities during the Spring 2020 Semester and allegedly were entitled to partial refunds based on the University's transition to remote instruction beginning in March 2020 in response to the COVID-19 pandemic) and the same interests. Thomas J. McKenna,

Esq. and Gregory M. Egleston, Esq. of Gainey McKenna & Egleston and L. Timothy Fisher, Esq. and Neal J. Deckant, Esq. of Bursor & Fisher, P.A. are experienced class counsel who are adequately representing the proposed Settlement Class.

5. There is no question that the Parties are at arm's length. The Settlement Agreement appears to be the result of extensive, non-collusive, arm's-length negotiations between experienced counsel who were adequately informed of the strengths and weaknesses of the case through discovery and whose negotiations were supervised by the Honorable G. Michael Harvey, United States Magistrate Judge.

6. The Settlement Agreement provides adequate relief to the proposed Settlement Class. The University has agreed to pay \$2,073,680 to cover cash payments to Settlement Class Members, Notice and Administration Costs, a Fee and Expense Award for Class Counsel, and a Class Representative Award for the Class Representative. From that amount, Settlement Class Members are eligible to receive cash payments. Cash payments will be shares of the Net Settlement Fund divided equally amount Settlement Class Members. Settlement Class Members do not need to file a claim in order to receive a cash payment.

7. If the Settlement Agreement had not been reached, the Parties planned to vigorously contest this matter, including the University's anticipated summary judgment motion(s) and Plaintiff's motion for class certification, and Plaintiff's chances at trial also would have been uncertain. In light of the costs, risks and delay of trial and appeal, this relief is adequate for purposes of Rule 23(e)(1).

8. There is no reason to doubt the effectiveness of distributing relief under the Settlement Agreement. As further addressed below, the Parties propose a Notice program, which

is detailed in Settlement Agreement, which the Court finds is reasonably calculated to reach nearly all members of the proposed Settlement Class.

9. After Notice is provided to Settlement Class Members and in connection with the Final Approval Hearing, this Court will assess the reasonableness of the proposed Settlement and the request of Class Counsel for a Fee and Expense Award and Class Representative Award. At this preliminary stage, the Court finds that the plan to request that the Fee and Expense Award and Class Representative Award be paid from the Net Settlement Fund creates no reason not to direct notice to the proposed Settlement Class and permit Settlement Class Members to be apprised of their rights and the proposed Settlement.

10. No agreements exist between the Parties aside from the Settlement Agreement.

11. The Settlement Agreement treats members of the proposed Settlement Class equitably relative to each other because all members of the proposed Settlement Class are eligible for an equal cash payment from the Net Settlement Fund. These are equitable terms.

12. Having reviewed the Settlement Agreement, the supporting exhibits and the Parties' arguments, this Court finds that the Settlement Agreement is fair, reasonable, and adequate to warrant providing notice to the Settlement Class, and thus likely to be approved, subject to further consideration at the Final Approval Hearing to be conducted as described below.

13. The Court preliminarily approves the Settlement Agreement subject to the Final Approval Hearing for purposes of deciding whether to grant final approval to the Settlement. This determination permitting notice to the Settlement Class is not a final finding, but a determination that there is probable cause to submit the proposed Settlement Agreement to Settlement Class Members and to hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement.

Likely Certification Of Settlement Class

14. Because Settlement Class Members seek damages, the Court assesses the likelihood that it will be able to certify the proposed Settlement Class under Rules 23(a) and 23(b)(3). *See* Fed. R. Civ. P. 23(a)-(b). The Court makes this assessment for the purposes of settlement only at this time.

15. As to the requirements of Rule 23(a) for settlement purposes only, (i) the Settlement Class provisionally certified herein includes thousands of individuals, and joinder of all would be impracticable, (ii) there are questions of law and fact common to the Settlement Class, (iii) the Class Representative's claims are typical of the claims of the Settlement Class she seeks to represent for purposes of settlement and (iv) the Class Representative is an adequate representative of the Settlement Class. As to the requirements of Rule 23(b)(3) for settlement purposes only, questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member, and a class action on behalf of the Settlement Class is superior to other available means of settling and disposing of this dispute. Because the Settlement Agreement contemplates that no trial of the claims asserted in the Class Action Complaint will be necessary, however, the Court makes no finding as to the manageability of adjudicating those claims on a class basis. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).

16. For these reasons, pursuant to Rule 23, and for settlement purposes only, the Court finds it will likely certify the Settlement Class defined above in Paragraph 1 of this Order and preliminarily certifies the Settlement Class. This finding is subject to further consideration at the Final Approval Hearing to be conducted as described below.

17. The Court hereby preliminarily appoints, for settlement purposes only, the Class Representative as the representative of the Settlement Class. Pursuant to Rule 23(g), the Court

hereby preliminarily appoints, for settlement purposes only, Thomas J. McKenna, Esq. and Gregory M. Egleston, Esq. of Gainey McKenna & Egleston and L. Timothy Fisher, Esq. and Neal J. Deckant, Esq. of Bursor & Fisher, P.A. as Class Counsel for the Settlement Class.

Approval Of The Manner And Form Of Notice

18. Epiq Class Action & Claims Solutions, Inc. has been selected to serve as the Claims Administrator under the terms of the Settlement Agreement. The Court hereby appoints Epiq Class Action & Claims Solutions, Inc. to serve as the Claims Administrator in accordance with the provisions of Section VII of the Settlement Agreement.

19. The Court approves the Notice, the content of which is without material alteration from Exhibits A-1 and A-2 to the Settlement Agreement.

20. The Court approves the creation of the Settlement Website, as defined at Paragraph 36 of the Settlement Agreement, that shall include, at a minimum, copies of the Settlement Agreement and the Notice, and shall be maintained in accordance with the provisions of Section VII of the Settlement Agreement.

21. The Court finds that the Notice program as set forth in the Settlement Agreement, filed concurrently with the Motion, (a) is the best practicable notice, (b) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (c) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and of their right to object to or to exclude themselves from the Settlement and (d) meets all applicable requirements of applicable law. The Notice program satisfies the requirements of Rule 23(c)(2)(B) and due process. The Court therefore approves the Notice program and the Notice documents substantially in the form attached as the exhibits to the Motion.

22. The Court orders the Claims Administrator to file proof of compliance with the Notice program at least twenty-one (21) days before the Final Approval Hearing.

23. Pursuant to 34 C.F.R. § 99.37(a), the Court finds that names, email addresses, and mailing addresses in education records of current students of the University constitute “directory information” and may be disclosed, without consent, to the Claims Administrator for purposes of providing Notice in this Action if (a) the University has previously provided public notice that the names, email addresses, and mailing addresses are considered “directory information” that may be disclosed to third parties, including public notice of how students may restrict the disclosure of such information; and (b) the student has not exercised a right to block disclosure of any such information, including but not limited to email addresses or mailing addresses by requesting that Howard’s Registrar keep their records “confidential” (“FERPA Block”). The University shall not disclose from education records the names, email addresses, or mailing addresses subject to a FERPA Block.

24. Pursuant to 34 C.F.R. § 99.37(b), the Court further finds that names, email addresses, and mailing addresses in education records of former students of the University constitute “directory information” and may be disclosed, without consent, to the Claims Administrator for purposes of providing class notice in this Action, provided that the University continues to honor any valid and un-rescinded FERPA Block (*i.e.*, where students have requested that Howard’s Registrar keep their records “confidential”). The University will send notice to Settlement Class Members whose email addresses and mailing addresses are subject to a valid and un-rescinded FERPA Block.

25. This Order shall constitute a “judicial order” within the meaning of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9), sufficient to compel the University to provide the Class List information to the Claims Administrator in accordance with Section IV.1 of the Settlement Agreement. The Court further rules that the Notice

and the Notice program constitute a reasonable effort under 34 C.F.R. § 99.31(a)(9)(ii) to notify Settlement Class Members of this Order sufficiently in advance of disclosure to allow the Settlement Class Member an opportunity to seek protective action, including filing a motion to quash with this Court.

Participation In, Exclusion From, Or Objection To The Settlement

26. The Court orders any Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion in writing that:

- a. includes a statement requesting exclusion from the Settlement Class;
- b. is personally signed by the Settlement Class Member; and
- c. includes the Settlement Class Member's name, mailing address,

telephone number, email address, and the caption of the Action.

27. Members of the Settlement Class who wish to be excluded from the Settlement Class must do so with respect to all claims against the University. A member of the Settlement Class may opt out on an individual basis only; so-called "mass" or "class" opt outs shall not be allowed.

28. All requests for exclusion must be submitted no later than ninety-five (95) days after the entry of this Order. Any member of the Settlement Class who submits a timely request for exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under the Settlement Agreement.

29. Any Settlement Class Member who fails to submit a timely and complete request for exclusion sent to the proper address shall be subject to and bound by the Settlement Agreement and every order or judgment entered pursuant to the Settlement Agreement. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent

with respect to the desire of the Settlement Class Member to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion signed only by counsel or another representative shall not be permitted.

30. Any Settlement Class Member who wishes to object to the Settlement Agreement or the proposed settlement or to the requested Fees and Expense Award must file with the Court a written objection no later than ninety-five (95) days after the entrance of this Order. Such objection must:

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

31. The Settlement Class Member must also serve by mail or hand delivery the Settlement Class Member's objection, including all papers or evidence in support thereof, upon the Claims Administrator, Class Counsel and Howard Counsel, at the addresses set forth in the Class Notice.

32. Any Settlement Class Member who fails to properly and timely file a written objection with the Court, along with the required information and documentation set forth in ¶ 30 above, or to serve them as required in ¶ 31 above, shall not be heard during the Final Approval Hearing, shall not have his or her objections be considered by the Court and shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

33. Class Counsel and Howard Counsel may respond to any objection filed by a Settlement Class Member, and must file such a response with the Court no later than seven (7) days prior to the Final Approval Hearing.

34. Settlement Class Members may not both object and opt out. If a member of the Settlement Class submits both a request for exclusion and an objection, the request for exclusion shall be controlling.

35. Any attorney hired by a Settlement Class Member for the purpose of objecting to the Settlement Agreement, the proposed Settlement, or the requested Fees and Expense Award will be at the Settlement Class Member's expense.

36. Any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement or to the requested Fee and Expense Award and who intends to make an appearance at the Final Approval Hearing must provide to the Claims Administrator (who shall forward it to Class Counsel and Howard Counsel) and file with the Clerk of the Court a notice of intention to appear no later than ninety-five (95) days after the entry of this Order.

37. Any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Final Approval Hearing must provide to the Claims Administrator (who shall forward it to Class Counsel and Howard Counsel) and file with the Court a notice of intention to appear no later than ninety-five (95) days after the entry of this Order.

38. The Court orders the Claims Administrator to establish a post office box in the name of the Claims Administrator to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other communications. Only the Claims Administrator, Class Counsel, the University's counsel, the University, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise provided in the Settlement Agreement.

39. The Court orders the Claims Administrator to promptly furnish Class Counsel and Howard Counsel with copies of any and all written requests for exclusion, notices of intention to appear, or other communications that come into its possession, except as expressly provided in the Settlement Agreement.

40. The Court orders that Class Counsel shall file their applications for a Fee and Expense Award and a Class Representative Award in accordance with the terms set forth in Section X of the Settlement Agreement.

41. The Court orders the Claims Administrator to provide Class Counsel and Howard Counsel with copies of all requests for exclusion on a weekly basis by email and to provide the Opt-Out List to Class Counsel and Howard Counsel no later than seven (7) days after the Opt-Out and Objection Date. The Court further orders Class Counsel to file with the Court the Opt-Out List with an affidavit from the Claims Administrator attesting to the completeness and accuracy thereof no later than three (3) business days thereafter or on such other date as the Parties may direct.

Final Approval Hearing And Related Deadlines

42. This Court will hold a Final Approval Hearing, on [_____] at [__:__], in the United States District Court for the District of Columbia, Courtroom [_____], 333 Constitution Ave., N.W., Washington, D.C. 20001 or by remote means as ordered by the Court.

The purposes of the Final Approval Hearing will be to consider the fairness, reasonableness, and adequacy of the proposed Settlement and the application for a Fee and Expense Award and a Class Representative Award, and to consider whether the Court should issue a Final Order and Judgment approving the Settlement, granting Class Counsel's application for a Fee and Expense Award, granting the application for a Class Representative Award, and dismissing the claims against the University with prejudice.

43. The Court reserves the right to adjourn the Final Approval Hearing without further notice to Settlement Class Members, or to approve the Settlement with modification without further notice to Settlement Class Members.

44. Class Counsel's papers in support of any application for a Fee and Expense Award and/or Class Representative Award shall be filed no later than fourteen (14) days prior to the Opt-Out and Objection Date.

45. Class Counsel's papers in support of final approval of the Settlement shall be filed no later than ten (10) days prior to the Final Approval Hearing.

Effects Of This Preliminary Approval Order

46. All members of the Settlement Class, unless and until they have timely and properly excluded themselves from the Settlement Class, are preliminarily enjoined from (a) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, participant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims, (b) filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any member of the Settlement Class, regardless of whether or not they have been excluded from the Settlement Class, based on, relating to, or arising

out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims and (c) attempting to effect Opt-Outs of a class of individuals in this lawsuit or any other lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims.

47. Within twenty-one (21) business days following the entry of Final Judgment, Howard shall pay into the Escrow Account the Settlement Amount, less any costs of Notice and Administration Costs that Howard already remitted to the Claims Administrator related to effectuating Notice pursuant to Section IV of the Settlement Agreement.

48. Any member of the Settlement Class who does not submit a timely, written request for exclusion from the Settlement Class (*i.e.*, become an Opt-Out) will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

49. If for any reason the Settlement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated, or materially modified on appeal (and, in the event of material modification (which shall not include any reduction to a Fee and Expense Award or to the Class Representative Award), if either party elects to terminate the Settlement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement Agreement), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

Dated: _____ /s/ _____
Dabney L. Friedrich
United States District Judge