

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALINA FLATSCHER, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

v.

THE MANHATTAN SCHOOL OF MUSIC,

Defendant.

Case No.: 1:20-cv-04496-KPF

**ORDER PRELIMINARILY APPROVING THE PROPOSED SETTLEMENT AND
PROVISIONALLY CERTIFYING THE PROPOSED SETTLEMENT CLASS**

WHEREAS, the Parties to the above-captioned putative class action (“Action”) have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Stipulation of Settlement (the “Settlement”) entered into by the Parties as of May 12, 2023 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action with prejudice upon the terms and conditions set forth in the Settlement;

NOW, THEREFORE, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, upon the agreement of the Parties, and after consideration of the Settlement and its exhibits,

IT IS HEREBY ORDERED that:

1. Unless otherwise defined herein, defined terms used in this Order have the same meaning as defined in the Settlement.

2. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Settlement and the exhibits attached thereto, are preliminarily approved pending a Final Approval Hearing on the Settlement as provided herein.

3. For purposes of the proposed Settlement only, the Court preliminarily finds and determines that the Action may proceed as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and provisionally certifies the following Settlement Class:

All students enrolled at the Manhattan School of Music (“MSM”) who were assessed and paid Spring semester 2020 Tuition or Fees. The Settlement Class excludes: (i) any person who withdrew from MSM prior to March 15, 2020; (ii) any person who properly executes and files a timely opt-out request to be excluded from the Settlement Class; and (iii) the legal representatives, successors or assigns of any such excluded person in subsection (ii) of this paragraph.

4. For purposes of the proposed Settlement only, the Court preliminarily finds and determines, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, as follows: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class, and those questions predominate over any individual questions; (c) the claims of Named Plaintiff in the Action are typical of the claims of the Settlement Class; (d) the Named Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for fairly and efficiently adjudicating the Action.

5. For purposes of the proposed Settlement only, the Court preliminarily appoints Named Plaintiff Alina Flatscher as Settlement Class Representative.

6. For purposes of the proposed Settlement only, the Court preliminarily appoints the law firm of Gainey McKenna & Egleston as Class Counsel to act on behalf of the Settlement Class and the Settlement Class Representative with respect to the Settlement. The Court preliminarily authorizes Class Counsel to enter into the Settlement on behalf of the Settlement Class

Representative and the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

7. The Court appoints the firm of Simpluris, Inc. as Settlement Administrator to administer the notice procedure and distribute the Net Settlement Fund, under the supervision of Class Counsel.

8. Having reviewed the proposed Short Form Notice of Proposed Class Action Settlement and Hearing (“Short Form Notice”), and the proposed Long Form Notice of Proposed Class Action Settlement and Hearing (“Long Form Notice”), submitted by the Parties as Exhibits A-1 and A-2 to the Settlement, the Court approves, as to form and content, such notice.

9. The Court directs that the Settlement Administrator send via email the Short Form Notice to all Potential Settlement Class Members at the email address in MSM’s Registrar’s records by **June 14, 2023**. The Court further directs the Settlement Administrator to send the Short Form Notice via U.S. mail to the last known mailing address of all Potential Settlement Class Members for whom a valid email address is not available by **June 14, 2023**. MSM will produce to the Settlement Administrator the last known email and postal addresses belonging to all Potential Settlement Class Members by **May 30, 2023**.

10. No later than **May 30, 2023**, and before the issuance of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website, which shall include, in downloadable format, the following: (i) the Long Form Notice; (ii) this Order; (iii) the Settlement (including all of its exhibits); and (iv) any other materials agreed upon by the Parties and/or required by the Court.

11. The Court directs that within *seven (7) days* of the entry of this Order, MSM will produce to the Settlement Administrator a list from MSM's Registrar's records that includes the names and last known email and postal addresses, to the extent available, belonging to all Settlement Class Members (the "Class List"). The Class List will be provided to the Settlement Administrator for the sole purpose of the Settlement Administrator performing its obligations pursuant to this Settlement and shall not be used for any other purpose at any time.

12. The Court further directs the Claim's Administrator to provide a link to the Settlement Website within one (1) business day of the Settlement Website being established.

13. The Court finds and determines that (a) emailing and mailing the Short Form Notice, (b) posting of the Long Form Notice on the Settlement Website, and (c) posting a link to the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable laws and rules.

14. Any person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. No Settlement Class Member may both opt-out of the Settlement and object to the Settlement; a Settlement Class Member must decide whether to opt-out of the Settlement or to object.

15. Any person who desires to request exclusion from the Settlement Class must submit a written request for exclusion in the form and manner required by the notice. Such written request for exclusion must be mailed to the Settlement Administrator such that it is postmarked no later than **July 31, 2023** (the "Objection/Exclusion Deadline"), and 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, email address, and the caption for the Action.

16. All persons who submit valid and timely written requests for exclusion as set forth in this Order and the notice shall have no rights under the Settlement, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Settlement or any Final Judgment entered in this Action.

17. A hearing will be held by this Court in Courtroom 618 of the Thurgood Marshall Courthouse, United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007, at **11:00 a.m. on September 8, 2023** (“Final Approval Hearing”), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the proposed manner of distribution of the Net Settlement Fund should be approved as fair, reasonable, and adequate to the Settlement Class; (c) whether to approve the application of Class Counsel for an award of Attorneys’ Fees and Litigation Expenses; (d) whether to approve the payment of a Case Contribution Award to the Settlement Class Representative; (e) whether a Final Judgment should be entered; and (f) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Class. The Final Approval Hearing may be held in person, telephonically, or remotely via zoom or other electronic platform without further notice. The Settlement Administrator shall post information about the Final Approval Hearing on the Settlement Website, and the Settlement

Website should be checked for any changes to the date of the Final Approval Hearing or the manner in which it will be held.

18. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Class Counsel shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the provisions set forth above concerning the distribution of notice to the Settlement Class.

19. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement Class Member does not enter an appearance, they will be represented by Class Counsel.

20. Any Settlement Class Member who wishes to object to the Settlement, the manner of distribution of the Net Settlement Fund, the application for Case Contribution Award and/or the Fee Award, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, why a Final Judgment should not be entered thereon, why the Case Contribution Award should not be approved, or why the Fee Award should not be granted, may do so, but must proceed as set forth in this paragraph. If a Settlement Class Member objects to the Settlement and the Settlement is nonetheless approved by the Court, then the objecting Settlement Class Member is a member of the Settlement Class and will receive their share of the Net Settlement Fund. No Settlement Class Member or other person will be heard on such matters unless they have postmarked no later than the Objection/Exclusion Deadline (**July 31, 2023**) a written objection that: (a) states that the person objecting is a Settlement Class Member; (b) includes the name, address, email, and telephone number of the Settlement Class Member objecting; (c) is personally signed by the objecting Settlement Class Member; (d) contains a statement that includes all objections, states whether each objection applies

only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and states the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); and (e) includes a statement of whether the objector intends to appear at the Final Approval Hearing, with or without counsel. Such written objections, briefs, papers, and statements must be filed with the Court, and copies must be delivered by mail, hand, or overnight delivery services at the same time to the following counsel:

Gregory M. Egleston
Gainey McKenna & Egleston
501 Fifth Avenue, 19th Floor
New York, NY 10017

Class Counsel

Gregory B. Reilly
Bond, Schoeneck & King PLLC
600 Third Avenue, 22nd Floor
New York, NY 10016-191

Attorneys for MSM

21. This Order shall constitute a “judicial order” within the meaning of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9), sufficient to compel MSM to provide the “Class List” regarding Settlement Class Members (*i.e.*, directory information, as FERPA defines that term) to the Settlement Administrator in accordance with footnote 2 of the Settlement.

22. Any Settlement Class Member who does not make their objections in the manner and by the date set forth in Paragraph 15 of this Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in this Action or any other action or proceeding, absent further order of the Court.

23. Upon the Effective Date contemplated by Paragraph 1(g) of the Settlement, the Releasing Settlement Class Parties shall have fully, finally, and forever released all Released Claims against MSM, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against MSM.

24. Upon the Effective Date contemplated by Paragraph 1(g) of the Settlement, only persons who are Settlement Class Members shall have rights in the distribution of the Settlement Fund created by the Settlement, except as provided in the Settlement.

25. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

26. The application for Attorneys' Fees must be filed by **July 17, 2023**.

All briefs and supporting documents in support of a request for Final Approval of the Settlement shall be filed by **August 29, 2023**.

Further Matters

27. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement.

28. Members of the Settlement Class shall be bound by all determinations and judgments concerning the Settlement and Final Judgment as to the same, whether favorable or unfavorable.

29. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

Date: May 15, 2023



KATHERINE POLK FAILLA
United States District Judge