

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

RAFAEL FIGUEROA, KAHLIL CABBLE,
TY'ANTHONY SCOTT, and RYAN PETTY,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

POINT PARK UNIVERSITY,

Defendant.

Case No.: 2:20-cv-01484-LPL

**DECLARATION OF GARY F. LYNCH IN SUPPORT OF UNOPPOSED MOTION FOR
AWARD OF ATTORNEYS' FEES, COSTS, AND CASE CONTRIBUTION AWARDS
TO REPRESENTATIVE PLAINTIFFS**

I, Gary F. Lynch, declare as follows:

1. I am an attorney admitted to practice law in the Commonwealth of Pennsylvania and have been engaged in the practice of law for over thirty-four years, with the majority of my career dedicated to representing plaintiffs in the litigation of complex/class actions. I am a founding partner of Lynch Carpenter LLP (“Lynch Carpenter”), which is a 21-lawyer plaintiff-side class action firm with offices in Pennsylvania, Illinois, and California and counsel for the Named Plaintiffs and conditionally certified Settlement Class in the above-captioned matter against Defendant Point Park University.

2. I submit this declaration in Support of Plaintiffs’ Unopposed Motion for Award of Attorneys’ Fees, Costs, and Case Contribution Awards to Representative Plaintiffs.

3. I have personal knowledge of the matters stated in this declaration except those stated on information and belief, and as to those, I believe them to be true. If called upon, I could and would competently testify to them.

4. I served as lead counsel for Plaintiffs and oversaw the prosecution of the entire action. Class Counsel undertook this action on a contingent fee basis, meaning that to date we have received no payment for our services. We also advanced all litigation expenses, and to date have not received reimbursement for these from any source. Further, our agreements with our clients provided that we would not charge them for fees or expenses in the event of an unsuccessful outcome. Class Counsel carefully tracked all time spent and expenses incurred in this matter. These records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform to Lynch Carpenter’s

practices. As a result of this review and related reductions, the time reflected in Class Counsel's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the action and resolve the Settlement before the Court.

5. Plaintiffs filed this action to recover a partial refund of retained tuition and fees owed to Plaintiffs, who commenced this action on behalf of themselves and a putative class of individuals who paid tuition and/or fees to attend Point Park University for in-person, hands-on educational services and access for the Spring 2020 semester and had their course work moved to online only learning.

6. During the course of this litigation, and as detailed herein, Class Counsel worked in an efficient and effective manner. Duplication of efforts was avoided.

7. Prior to commencing this action, Class Counsel spent many hours investigating the claims against Point Park University. During the course of this litigation, the Parties engaged in motions practice and extensive discovery, including written discovery, document production, informal discovery produced via the mediation process, and communicating with experts regarding Plaintiffs' claims. The discovery in which Class Counsel engaged provided the information needed to objectively evaluate the strengths and weaknesses of Plaintiffs' and Class Members' claims.

8. The Parties have entered into a Settlement Agreement following two separate mediation sessions, one overseen by Carole Katz on February 3, 2022, and a second overseen by David White on September 1, 2022. The Parties reached a settlement in principle following the September 1, 2022 mediation session, and only after a mediator's proposal.

9. The Parties did not negotiate the amount of Class Counsel's fees and expenses or Case Contribution Awards to Plaintiffs until after the key provisions of the Settlement Agreement, including the amount of relief to the Settlement Class, were agreed upon.

10. Lynch Carpenter has kept detailed record of hours expended throughout this litigation, which includes explanations of work performed by each individual. Lynch Carpenter's total compensable time for which it seeks an award of attorneys' fees is summarized below:

<u>Professional</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Gary Lynch	Partner	101.4	\$1,000	\$101,400
Kelly Iverson	Partner	3.6	\$900	\$3,240
Jamisen Etzel	Partner	40.1	\$800	\$32,080
Nicholas Colella	Associate	181.7	\$600	\$109,020
Patrick Donathen	Associate	5.5	\$450	\$2,475
James LaMarca	Associate	3.5	\$450	\$1,575
Bailey Corbin	Associate	5.6	\$400	\$2,240
Daniel Hart	Paralegal	8.5	\$250	\$2,125

11. Thus, the total time Lynch Carpenter has expended on this matter is **349.9** hours, and the total lodestar value of these professional services is **\$254,155.00**.

12. Lynch Carpenter's lodestar figures do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

13. Lynch Carpenter incurred **\$8,353.39** in expenses that were reasonably necessary to the prosecution of this litigation. Lynch Carpenter's total expenses for which it seeks reimbursement is summarized below:

<u>Category</u>	<u>Expenses</u>
Filing Fees	\$470.00
Service of Process	\$205.00
Mediation	\$7,678.39
Total:	\$8,353.39

14. We believe the expenses for which Lynch Carpenter seeks reimbursement are a reasonable amount and were necessary for the effective and efficient prosecution of this action. We also believe that the expenses submitted are of the type normally charged to and paid by fee-paying clients.

15. The above hourly rates for Lynch Carpenter's attorneys and professional support staff are the firm's current hourly rates or the firm's equivalent rate for the biller as of their last date of employment. The hourly rates for attorneys and professional support staff at Lynch Carpenter are the same as the regular rates charged for their services in hourly and contingent fee matters. The time and lodestar spent preparing Plaintiffs' Unopposed Motion for Award of Attorneys' Fees, Costs, and Service Awards to Representative Plaintiffs were excluded from the above values.

16. Lynch Carpenter's hourly rates have been approved in other class actions, including *Opris, et al. v. Sincera Reproductive Medicine*, No. 2:21-cv-03072, ECF Nos. 62-64 (E.D. Pa.); *Morrow v. Ann, Inc.*, No. 1:16-cv-03340, ECF Nos. 70-71, 94 (S.D.N.Y.); *In re Vizio, Inc. Consumer Privacy Litig.*, No. 8:16-ml-02693, ECF Nos. 308-11, 308-16, 308-18, 308-19, 337 (C.D. Cal. Apr. 12, 2019).

17. The Named Plaintiffs performed valuable services for members of the Settlement Class by bringing their claims to Class Counsel for investigation, agreeing to serve as

representative plaintiffs, reviewing the complaint, remaining available to consult with Class Counsel when necessary regarding the progress of the litigation, and reviewing the progress of the litigation. Additionally, Plaintiffs searched for and produced documents and responded to written discovery requests, and were prepared to give deposition testimony. Plaintiffs' cooperation and participation in this litigation were beneficial in helping guide the litigation and to develop damage models.

18. Class Counsel have significant experience in class-action litigation, including university breach of contract cases like this one. Lynch Carpenter and its attorneys have led, and continue to lead, numerous analogous cases across the country, including generating favorable Third Circuit law in *Hickey v. Univ. of Pittsburgh*, No. 21-2013, 2023 WL 5159578 (3d Cir. Aug. 11, 2023), reversing, in part, the District Court's granting of the University of Pittsburgh's motion to dismiss in *Hickey v. University of Pittsburgh*, 535 F.Supp.3d 372 (W.D. Pa. 2021), and reversing the District Court's granting of Temple University's motion to dismiss in *Ryan v. Temple University*, 535 F.Supp.3d 356 (E.D. Pa. 2021).

19. Lynch Carpenter has also represented plaintiff students in the following analogous cases that have reached successful resolution: *Kincheloe v. Univ. of Chicago*, 1:20-cv-03015 (N.D. Ill.) (preliminary approval forthcoming); *Smith v. Univ. of Pennsylvania*, 20-2086 (E.D. Pa.) (pending final approval); *Espejo et al v. Cornell University*, Case No. 3:20-cv-00467-MAD-ML (N.D.N.Y.) (pending final approval); and *Carpey v. Board of Regents of the University of Colorado*, No.: 2020cv31409 (Colo. Dist. Ct., Denver Cnty.).

20. Further, as demonstrated by Lynch Carpenter's Firm Resume attached as Exhibit A, Settlement Class Counsel have extensive experience in class action litigation.

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 6, 2023
In Pittsburgh, Pennsylvania

/s/ Gary F. Lynch
Gary F. Lynch