

## **AMENDED SETTLEMENT AGREEMENT**

This Amended Settlement Agreement (this “Agreement”) is entered into by and among Eric Botcher and Samuel Galizia (the “Settlement Class Representatives”), individually and as representatives of the Settlement Class (defined below), on the one hand; and Make School PBC f/k/a Make School Inc. (“Make School PBC”); Make School ABC, LLC (“Make School ABC”); Make School ISA SPV, LLC (“Make School SPV”); and Vemo Education, Inc. (“Vemo”) (together, “Defendants”), on the other. The Settlement Class Representatives and Defendants are referred to collectively herein as the “Parties.”

### **I. RECITALS**

This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. On or about June 25, 2021, Uchenna Aguocha and 46 other plaintiffs (collectively, “Plaintiffs”) filed a Complaint against Defendants in the Superior Court of California, County of San Francisco, thereby commencing the action entitled *Aguocha, et al. v. Make School PBC, et al.*, Case No. CGC-21-592710 (the “Action”). The Complaint asserted five causes of action, for (1) declarative and injunctive relief, (2) violation of California Business and Professions Code Section 17200, *et seq.*, (3) violation of California Business and Professions Code Section 17500, *et seq.*, (4) violation of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, *et seq.*, and (5) unjust enrichment.

B. Before Defendants responded to the original complaint in the Action, Plaintiffs filed a First Amended Complaint adding additional Plaintiffs on or about July 30, 2021, and a Second Amended Complaint on February 9, 2022. In addition to modifying various factual allegations, the Second Amended Complaint added a second cause of action for declaratory

judgment and a cause of action for violation of the Student Loan Servicing Act, California Civil Code Section 1788.101, *et seq.*

C. Plaintiffs and the Settlement Class Members are former students of Make School PBC, formerly known as Make School Inc., a defunct for-profit computer science school in San Francisco, California. Plaintiffs' claims arise out of, among other things, alleged misrepresentations and nondisclosures of material facts concerning Make School's educational program, accreditation, and income share agreement costs. Make School PBC made a general assignment for the benefit of creditors to Make School ABC on June 3, 2021. Make School SPV holds some of the ISAs challenged in the Action.

D. On May 18, 2022, before Defendants responded to the Second Amended Complaint, the Parties attended a mediation of this dispute before Barbara A. Reeves, an experienced mediator with JAMS. The Parties engaged in formal and informal discovery before and after the mediation, including with respect to detailed financial information concerning the ISAs entered into by members of the Settlement Class. Although the Parties did not reach a settlement on the day of the mediation, settlement discussions continued afterwards for several months with the assistance of Mediator Reeves, and the Parties eventually reached the class settlement set forth in this Agreement.

E. Defendants vigorously deny the claims asserted against them by Plaintiffs in the Action, and contend that they have numerous defenses including as to liability, class certification, and damages. Defendants nevertheless desire to settle the Action on the terms set forth herein solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings.

F. The Settlement Class Representatives and Class Counsel (defined below) believe

that the claims asserted in the Action possess merit, and have examined and considered the benefits to be obtained under the proposed settlement set forth in this Agreement, the risks associated with the continued prosecution of the complex and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, have engaged in formal and informal discovery, conducted an independent investigation, and engaged in settlement negotiations relating to the Action, and have concluded that the settlement set forth in this Agreement (the “Settlement”) is fair, adequate, reasonable, and in the best interests of the Settlement Class Representatives and the Settlement Class (defined below). This Agreement resulted from and is the product of extensive arm’s-length negotiations and mediation, and analyses by counsel knowledgeable and experienced in consumer and class action litigation.

G. The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Settlement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties’ desire and intention to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

H. The Settlement Class Representatives have completed additional confirmatory discovery to confirm material facts upon which Class Counsel relied in negotiating the Settlement, as well as the fairness, adequacy and reasonableness of the Settlement.

I. The Settlement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions hereof.

## II. DEFINITIONS

A. As used in this Agreement, capitalized terms have the meanings specified below:

1. “Class Counsel” means The Sequoia Law Firm and the Consumer Law Office of William E. Kennedy.
2. “Class Notice” means the notice of this Settlement that will be provided to the Settlement Class pursuant to this Agreement, including Internet Notice, Mailed Notice, and E-Mail Notice.
3. “Claim Form” means the form that Settlement Class Members may complete in order to update their contact information, select the term of their New Agreement, and/or to claim benefits available under the Settlement for Settlement Class Members who were eligible for the U.S. Department of Veterans Affairs Yellow Ribbon Program (irrespective of Make School’s eligibility for such program), substantially in the form attached hereto as Exhibit E, and as approved by the Court.
4. “Class Notice Date” means the date that E-Mail Notice and Mailed Notice are first provided to the Settlement Class Members hereunder.
5. “Class Notice Deadline” means the deadline for the Class Administrator to provide E-Mail Notice and Mailed Notice to the Settlement Class. The “Class Notice Deadline” shall be forty-five (45) days after the Preliminary Approval Date.
6. “Court” means the San Francisco County Superior Court.
7. “Day” means a calendar day, but if any deadline or other date set forth in this Agreement is a Saturday, Sunday, or Court holiday, such deadline or other date shall be on the next weekday that is not a Court holiday.
8. “Effective Date” means seven (7) Days after each and all of the following

conditions have occurred: (a) this Agreement has been executed and delivered to the other Parties by each of the Settlement Class Representatives, Class Counsel, and Defendants; (b) the Court has entered, without material modification, the Preliminary Approval Order substantially in the form of Exhibit A, conditionally certifying the Settlement Class, granting preliminary approval of the Settlement, and approving the Class Notice; (c) the Court-approved Class Notice and Claim Form have been duly provided as ordered by the Court; (e) Defendants have not elected to terminate the Settlement under Section III.G.2 of this Agreement by the deadline for them to do so; (f) the Court has entered, without material modification, the Final Approval Order approving the Settlement and that order has become Final (as defined below); and (g) the Court has entered the Judgment and that Judgment has become Final.

9. “E-Mail Notice” means the short-form notice of this Settlement, the proposed form of which is attached hereto as Exhibit D, that will be provided to the Settlement Class via e-mail pursuant to Section III.E.1 of this Agreement.

10. “Fee Order” means an order of the Court issued with respect to any application(s) for attorneys’ fees, costs, expenses, and incentive awards under this Agreement.

11. “Final” shall mean, with respect to the Final Approval Order, the Judgment, and the Fee Order, the later of: (a) seven (7) Days after the expiration of the time to seek appeal, review, rehearing, reconsideration or any other action seeking to reverse or modify a judgment or order; or (b) if any such document is filed, then fourteen (14) Days after the date upon which all appellate and/or other proceedings resulting from the document or any subsequent such documents have been finally terminated and the orders or judgments are affirmed in such a manner as to permit no further judicial action.

12. “Final Approval Hearing” means the hearing at or after which the Court

will determine whether to finally approve the Settlement as fair, reasonable, and adequate to the Settlement Class.

13. “Final Approval Order” means an order of the Court in substantially the form attached hereto as Exhibit G which finally and unconditionally grants final approval of the Settlement, grants final certification of the Settlement Class for settlement purposes only, authorizes payments to the Settlement Administrator as provided herein, and fully and finally releases the claims of Settlement Class Members as provided herein.

14. “Internet Notice” means the long-form notice of this Settlement, in substantially the form attached hereto as Exhibit E, which will be posted prominently on the Internet website created pursuant to Section III.E.2 of this Agreement.

15. “ISA” means an agreement by a student to share future income in exchange for tuition and/or a stipend for living expenses, commonly referred to as an income share agreement, whether in the form of a Tuition ISA or a Stipend ISA.

16. “ISA Amount” means the ISA Amount set forth in an ISA reflecting the amount of tuition and/or stipend being financed by a particular ISA. An ISA Amount is analogous to the principal amount or amount financed on a loan.

17. “Judgment” means an order of the Court in substantially the form attached hereto as Exhibit H.

18. “Mailed Notice” means the long-form notice of this Settlement, in substantially the form attached hereto as Exhibit E, that will be provided to the Settlement Class via U.S. mail pursuant to Section III.E.3 of this Agreement.

19. “New Agreement” means the agreement between each Settlement Class Member and the holder(s) of such Settlement Class Member’s Make School ISAs (or their

assignee(s)) that will replace the Settlement Class Member's ISAs that have not been voided or cancelled pursuant to Sections IV.A.1 or IV.A.6, or prior to the date of this Agreement. The form of the New Agreement is set forth in Exhibit C.

20. "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and their spouses, heirs, predecessors, successors, or assigns.

21. "Preliminary Approval Date" means the date on which the Preliminary Approval Order is entered by the Court.

22. "Preliminary Approval Order" means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as Exhibit A.

23. "Released Claims" means the claims and matters released in Section VI of this Agreement.

24. "Released Parties" means the Persons released by Section VI of this Agreement.

25. "Servicer" refers to Launch Servicing, LLC.

26. "Settlement Administrator" refers to CPT Group, which the Parties have agreed will be responsible for the administration of the Settlement, subject to Court approval.

27. "Settlement Class" means the approximately 266 Persons who obtained at least one income share agreement from Make School during the Settlement Class Period that remained outstanding as of April 28, 2023, and who do not opt out of the Settlement Class

pursuant to this Agreement. Excluded from the Settlement Class are the judges to whom the Action is assigned and the members of their staff or immediate family.

28. “Settlement Class Member” means a Person in the Settlement Class who does not timely submit a valid request for exclusion from the Settlement Class.

29. “Settlement Class Period” means the period of time between June 1, 2015 and the Preliminary Approval Date, inclusive.

30. “Settlement Class Representatives” means Eric Botcher and Sam Galizia.

31. “Stipend ISA” means an ISA originated to finance living expenses for a student attending Make School (or, if applicable, Dominican University as a successor education provider to Make School students).

32. “Tuition ISA” means an ISA originated to finance tuition for attending Make School (or, if applicable, Dominican University as a successor education provider to Make School students).

33. “Yellow Ribbon Claimant” means a Settlement Class Member who was individually eligible for the U.S. Department of Veterans Affairs Yellow Ribbon Program irrespective of Make School’s eligibility for such program.

34. Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including in the attached Exhibits.

### **III. SETTLEMENT PROCEDURES**

A. Third Amended Complaint. In connection with the motion for preliminary approval of the Settlement, the Settlement Class Representatives shall lodge with the Court a Third Amended Complaint in the form attached as Exhibit B, for settlement purposes only. The Parties hereby stipulate to the filing of the Third Amended Complaint upon entry of the



Preliminary Approval Order without material modification, and Class Counsel shall undertake any further actions needed to cause the filing of the previously lodged Third Amended Complaint after entry of the Preliminary Approval Order. Upon the filing of the Third Amended Complaint, Plaintiffs who are not Settlement Class Representatives shall be dismissed from the Action without prejudice, such that their claims against Defendants shall not be extinguished and they shall retain the ability to participate in the Settlement provided that they do not opt out as permitted herein. In the event that the Court does not grant both preliminary and final approval of the Settlement, the Second Amended Complaint shall be reinstated and the case shall proceed on an individual (rather than class) basis, and the reinstated Second Amended Complaint shall relate back to the original Complaint for statute of limitations purposes.

B. Conditional Certification of Settlement Class. Solely for the purposes of settlement, providing Class Notice, and implementing this Agreement, the Parties agree to conditional certification of the Settlement Class, as defined above, which shall be certified for settlement purposes only.

C. Preliminary Approval. After the execution and delivery of this Agreement by all parties, and no later than July 28, 2023, the Settlement Class Representatives will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that (a) approve the filing of the Third Amended Complaint, for settlement purposes only, upon entry of the Preliminary Approval Order; (b) preliminarily approve the Settlement reflected herein as fair, adequate, and reasonable to the Settlement Class, and within the range of possible final approval; (c) conditionally certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (d) approve the forms of Class Notice and find that the notice program set forth herein constitutes

the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and California Code of Civil Procedure Section 382; (e) direct that Class Notice be provided to the Settlement Class, in accordance with this Agreement, by the Class Notice Deadline; (f) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class, and set a date after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene in the Action (the “Opt-Out and Objection Deadline”); (g) establish a date after which no one shall be allowed to submit a Claim Form (the “Claim Form Deadline”); (h) pending final determination of whether the Settlement should be approved, bar all Settlement Class Members, directly, on a representative basis, or in any other capacity from commencing or prosecuting against any of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (i) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to the effectuation of the Settlement; and (j) set a date for a hearing on final approval of the Settlement.

D. Settlement Administrator.

1. The Settlement Administrator will be responsible for providing Class Notice and administering the Settlement in accordance with this Agreement and applicable orders of the Court.

2. The actions of the Settlement Administrator shall be governed by the terms of this Agreement and subject to supervision by the Court. The Parties shall provide information reasonably requested by the Settlement Administrator pursuant to this Agreement.

3. The Settlement Administrator and Servicer shall provide reports and

information to Class Counsel as set forth below in order to enable Class Counsel to confirm that Class Notice is properly provided, that New Agreements are generated and delivered to Settlement Class Members consistent with the terms of this Agreement, and that the Settlement Administrator and the Defendants otherwise are complying or have complied with their respective responsibilities under this Agreement. Defendants Make School ABC and Make School SPV shall cause the Servicer and/or Administrator to provide Class Counsel with (1) data (in the form of Microsoft Excel sheets), along with sworn declarations authenticating that data, from which to calculate the amount owed (if anything) by each Settlement Class Member under the terms of this Agreement (to the extent not previously provided during confirmatory discovery), (2) access to the individualized information provided to Settlement Class Members on the Settlement Website, as set forth in Section III.E.2 below, and (3) copies of all New Agreements provided to Settlement Class Members.

E. Notice to the Class. Within fifteen (15) days of the Preliminary Approval Date, defendants Make School ABC and Make School SPV shall cause the Servicer to provide a list of all Settlement Class Members to the Settlement Administrator, together with any current or past address, telephone number, and email address known to the Servicer for each Settlement Class Member. The Settlement Administrator shall provide the Class Notice and Claim Form in the forms approved by the Court, as detailed below, by the Class Notice Deadline.

1. E-Mail Notice: By the Class Notice Deadline, the Settlement Administrator shall e-mail the E-Mail Notice and the Claim Form to all Settlement Class Members at the e-mail address(es) set forth in the Servicer's account records for each Settlement Class Member. A reminder e-mail of the E-Mail Notice and Claim Form shall be sent at least seven (7) Days after the Class Notice Deadline. In providing the foregoing E-Mail Notice, the

Settlement Administrator shall seek to maximize the chances of messages being received and opened, such as by sending e-mails on dates the Settlement Administrator believes are optimal, by using sending methods likely to avoid spam filters (such as sending e-mails in small batches), and by updating addresses using customary methods in response to e-mail bouncebacks, provided that such methods are cost-effective and reasonable under the circumstances. The Settlement Administrator shall cooperate with Class Counsel in demonstrating to the Court, through declarations or otherwise, that E-Mail Notice was provided in compliance with this Agreement.

2. Internet Notice: The Settlement Administrator shall establish an Internet website (the "Settlement Website") to provide detailed information to Settlement Class Members, using a domain name and content approved in writing by Class Counsel and Defendants' counsel. The website prominently shall display a long-form notice substantially in the form appended hereto as Exhibit E and the Claim Form substantially in the form appended hereto as Exhibit F. The Settlement Website shall include a web portal in which Settlement Class Members can access individualized information by using a unique identifier and password (provided in the E-Mail and Mailed Notices) so they can understand how specifically the Settlement will impact them, including which ISAs would be canceled, if any; the funding amounts, payment caps, and income share percentages for each ISA; the New Agreement's principal balance and monthly payment amounts for the New Agreement for such Settlement Class Member assuming a 180-month term; and the Early Payoff Amount) – with appropriate qualifications such as that the numbers are based on data as of a specific date. The website shall also make available this Agreement, the Third Amended Class Action Complaint, the Preliminary Approval Order, documents filed in connection with the Motion for Preliminary

Approval and Plaintiffs' Motion for Attorney's Fees and Incentive Awards, the toll-free number for the Settlement Administrator, contact information for Class Counsel, and any other materials the Parties agree in writing to include. The Settlement Website shall be made accessible by the date E-Mail Notice is e-mailed, and shall remain accessible for not less than 180 days after the Effective Date. The Settlement Website shall allow Settlement Class Members to submit Claim Forms electronically, but Settlement Class Members also may submit Claim Forms by e-mail or U.S. mail. The Settlement Administrator shall allow counsel for the Parties to preview and raise any concerns about the website before it goes live.

3. Mailed Notice: The Settlement Administrator shall take the following steps to locate updated information regarding potential Class Members for purposes of Mailed Notice:

i. Before mailing the Class Notice, the Settlement Administrator shall check the addresses of Settlement Class Members provided by Defendants against the National Change of Address registry. The Settlement Administrator shall also perform a skip trace using the Accurint database to determine the most up to-date addresses of Settlement Class Members before mailing.

ii. If any Mailed Notices are returned with a forwarding address, the Settlement Administrator will re-mail them with the Claim Form to the Settlement Class Member at the forwarding address within five (5) days from receipt of the returned mail.

iii. If, prior to the Opt-Out and Objection Deadline, any Mailed Notice is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace using a database other than Accurint and re-send the Mailed Notice and Claim Form to the new or different address within three (3) days.

However, if a determination is made in good faith by the Settlement Administrator that it is not possible to further update any particular Settlement Class Member's address in sufficient time to mail the Class Notice at least ten (10) Days before the Opt-Out and Objection Deadline, then the Settlement Administrator need make no further efforts to provide further notice to such Class Member.

4. The Mailed Notice, including a Claim Form and an addressed envelope for return of the Claim Form, shall be sent by the Settlement Administrator by first-class U.S. Mail to Settlement Class Members by the Class Notice Deadline and on the same day that E-Mail Notice is initially provided. Within fourteen (14) days of the Claim Form Deadline, the Settlement Administrator will provide counsel to the Parties with the (1) number of Settlement Class Members electing to opt out of the Settlement, (2) for the Settlement Class Members not electing to opt out of the Settlement, what term, if any, was selected by that Settlement Class Member, and (3) the number of Class Notices that were returned and the efforts made to locate those Class Members. As soon as practicable, the Settlement Administrator shall confirm that each Claim Form submitted is in the form required, that each Claim Form was submitted timely, and that the person submitting the Claim Form is a Settlement Class Member. The Opt-Out and Objection Deadline, as well as the Claim Form Deadline, shall be ninety (90) days after the Class Notice Date.

5. The Mailed Notice and E-Mail Notice shall include the address of or internet link to the Settlement Website, which shall have examples illustrating how the economic terms of the New Agreement will differ from the economic terms of existing ISAs, including the ISA funding amounts, income share percentages, and payment caps; the New Agreement principal amount and monthly payment amounts for 60, 120, and 180-month terms; and the Early

Payment Option. The Mailed Notice and E-Mail Notice also shall provide each Settlement Class Member with a unique identifier the Settlement Class Member can use (together with other identifying information needed to confirm the identity of the Settlement Class Member) to see on the Settlement Website the specific effect of the Settlement on that Settlement Class Member's ISAs, as provided in III.E.2 above. The Mailed Notice and E-Mail Notice also shall include the toll-free number for the Settlement Administrator and instructions for completing and submitting Claim Forms.

6. Toll-Free Number: The Settlement Administrator shall establish a toll-free telephone number Settlement Class Members may call to obtain additional information such as answers to frequently asked questions. The toll-free number may utilize interactive voice response technology and recorded messages rather than live operators, but the Settlement Administrator shall ensure that Settlement Class Members who call the toll-free number may request (and receive) copies of any of the materials on the Internet website. The toll-free number shall be operational by the date E-Mail Notice initially is e-mailed, and shall remain operational for not less than 180 days after the Effective Date. The Settlement Administrator shall allow the Parties' counsel to preview and raise any concerns regarding the information available through the toll-free number before it goes live.

F. Resolution of Disputes Concerning Settlement Administration. Settlement Class Members may dispute any matter concerning the administration of the Settlement, including but not limited to the amount owed pursuant to the Settlement Class Member's New Agreement, by submitting an e-mail or letter concerning the dispute ("Dispute Notice") to the Settlement Administrator within thirty (30) days of the Settlement Class Member's receipt of any document provided by the Settlement Administrator providing a basis for the dispute. The Dispute Notice

must contain the Settlement Class Member's full name, address, physical or electronic signature, a description of the dispute, a proposed resolution of the dispute, and any supporting materials. The Settlement Administrator shall promptly provide to counsel for the Parties copies of all Dispute Notices it receives. The Parties and the Servicer (if applicable) shall meet and confer in an attempt to resolve the dispute within fourteen (14) days of receiving a Dispute Notice. Any such dispute the Parties are not able to resolve shall be submitted to the Settlement Administrator for resolution. The Settlement Administrator shall inform the Settlement Class Member and counsel for the Parties of the outcome of any such submitted dispute within fourteen (14) days of receiving the dispute from the Parties for resolution. All Settlement Class Members who do not submit a Dispute Notice in accordance with the terms set forth herein waive all rights to challenge the administration of the Settlement.

G. Opt-Out Right/ Termination.

1. Settlement Class Members may opt out of the Settlement by e-mailing or sending a written request to the Settlement Administrator using the contact information designated in the Class Notice by the Opt-Out and Objection Deadline. Exclusion requests must: (i) be physically or electronically signed by the Settlement Class Member; (ii) include the full name, address, and (if known) Launch account number(s) of the Settlement Class Member requesting exclusion; and (iii) include a statement indicating an intent to be excluded from the Settlement Class in *Aguocha, et al. v. Make School PBC, et al.* The Settlement Administrator will retain a copy of all requests for exclusion and will promptly provide copies of any such requests to counsel for the Parties. Class Counsel will keep any such opt-out information confidential and use it only for purposes of determining whether a Settlement Class Member has properly opted out. In the event of any dispute as to whether or not a Settlement Class Member



has properly opted out, the Parties shall meet and confer and attempt to resolve the dispute; any dispute the Parties are not able to resolve shall be submitted to the Settlement Administrator for resolution. The Settlement Administrator shall inform the Settlement Class Member and counsel for the Parties of the outcome of any such submitted dispute within fourteen (14) days of receiving the dispute from the Parties for resolution. All Settlement Class Members who do not opt out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action.

2. If the number of Settlement Class Members who opt out exceeds fifteen percent (15%) of the total number of Settlement Class Members, then Defendants in their sole discretion will have the right to terminate the Settlement by giving written notice to Class Counsel within twenty-one (21) Days after the Opt-Out and Objection Deadline. In the event that the Settlement is terminated pursuant to this provision, the Parties will be returned to the *status quo ante* as if no settlement had been negotiated or entered into; provided, however, that all costs of Class Notice and all costs of administering the Settlement paid or incurred prior to termination shall be nonrefundable.

3. As set forth in Paragraph III.A, it is understood and agreed by the Parties that the Third Amended Complaint will be submitted to the Court for settlement purposes only in connection with the motion for preliminary approval. In the event that Defendants elect to terminate this Settlement pursuant to Paragraph III.G.2 above, the Second Amended Complaint will be reinstated, and this case will proceed on an individual (as opposed to class) basis, and the reinstated complaint will relate back to the original Complaint for purposes of any applicable statute of limitations.

H. Objections To The Settlement.

1. Any Settlement Class Member who has not previously opted out in accordance with the terms of this Agreement may submit a written objection by mail or e-mail to the Settlement Administrator by the Opt-Out and Objection Deadline. Whether or not a written objection is made, Settlement Class Members may appear at the Final Approval Hearing to object to the proposed Settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs and/or incentive awards. The Settlement Administrator shall provide copies of all objections it receives to counsel for the Parties within seven (7) days of receiving the objection from the Settlement Class Member. Class Counsel shall file with the Court copies of all such objections no later than the date on which they file a motion for final approval of the Settlement.

2. If any objection is rejected or overruled, the objecting Settlement Class Member will be bound by the Judgment as if he or she had not objected. Any person who requests exclusion from the Settlement Class may not object. If any Settlement Class Member submits a request for exclusion and also an objection, the request for exclusion shall take precedence and that person shall not be a Settlement Class Member.

3. If the Final Approval Hearing is continued, Class Counsel shall notify Settlement Class Members who submitted an objection of the date, time, and location of the continued Final Approval Hearing. Such notice may be provided by e-mail if an e-mail address is available; otherwise, notice shall be provided by mail at the address for the Settlement Class Member appearing in the Servicer's records.

I. Final Approval. Following the provision of Class Notice and expiration of the Opt-Out and Objection Period, the Settlement Class Representatives shall promptly request that

the Court enter the Final Approval Order, which shall specifically include provisions that:

- (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class;
- (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and California Code of Civil Procedure Section 382;
- (c) approve the settlement terms set forth in this Agreement;
- (d) finally certify the Settlement Class; and
- (e) confirm that the Settlement Class Representatives and the Settlement Class Members (except those who have timely and validly requested exclusion from the Settlement Class) have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Released Parties, subject to the Court's retaining continuing jurisdiction over the Parties for the purpose of enforcement of the terms of this Agreement. The Final Approval Order and Judgment shall not address any award of attorneys' fees and costs or incentive awards, which shall be addressed in the Fee Order.

J. Stay and Bar of Other Proceedings. All proceedings in the Action will be stayed following preliminary approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted final approval, the Parties agree not to pursue in the Action any claims or defenses otherwise available to them in the Action, and no Settlement Class Member, either directly, on a representative basis, or in any other capacity, may commence or prosecute against any of the Released Parties any action or proceeding asserting any of the Released Claims.

#### **IV. SETTLEMENT CONSIDERATION**

A. In full settlement of the Released Claims, and in consideration for the releases

specified in Section VI of this Agreement, Defendants agree to cause the following benefits to be provided to each Settlement Class Member within thirty (30) days after the Effective Date:

1. A Settlement Class Member who had one or more Tuition ISAs funded prior to July 12, 2018 shall have those Tuition ISAs voided, terminated, and cancelled. Tuition ISAs funded prior to July 12, 2018 shall not be replaced with New Agreements and Settlement Class Members will owe nothing under canceled Tuition ISAs.

2. By operation of the Judgment, Settlement Class Members who obtained (1) one or more Stipend ISAs prior to July 12, 2018 and/or (2) one or more ISAs on or after July 12, 2018 shall have all such ISAs consolidated and replaced by a New Agreement substantially in the form attached hereto as Exhibit C. Each Settlement Class Member shall be deemed to have agreed to and accepted the New Agreement, and will be legally bound by it. Defendants Make School SPV and Make School ABC shall cause the Servicer to provide copies of these New Agreements to Class Counsel and to each Settlement Class Member by e-mail and U.S. Mail within fifteen (15) days after the Effective Date.

3. The term of each New Agreement shall be 180 months unless the Settlement Class Member timely submitted a Claim Form selecting a term of either 60 or 120 months, in which case the term shall be the selected term. The New Agreement's term will start sixty (60) days after the Effective Date. As set forth in Exhibit C, the New Agreement is a no-interest payment plan in which payments are spread equally (subject to rounding) over the term of the New Agreement, subject to deferment if the Settlement Class Member does not meet a minimum income threshold and complies with specified deferment procedures.

4. Defendants Make School SPV and Make School ABC shall cause the Servicer to calculate the Principal Amount of each New Agreement using the Servicer's account

records for each Settlement Class Member. The Principal Amount shall be equal to (a) the sum of the ISA Amounts for each ISA entered into by the Settlement Class Member that was not canceled pursuant to Section IV.A.1 or IV.A.6, (b) minus the total payments previously made on any of the Settlement Class Member's Make School ISAs (whether canceled or not), (c) multiplied by 0.9 (i.e., 90% of the total ISA Amounts minus total payments); provided, however, that the maximum Principal Amount shall be \$100,000.00. In the event that a Settlement Class Member makes a payment on an ISA after the Principal Amount of the Settlement Class Member's New Agreement has been calculated by the Servicer, such payment shall be applied to the New Agreement. In the event that a Settlement Class Member would owe nothing under their New Agreement (because 90% of the total ISA amounts minus total payments is zero or negative), the Settlement Class Member will not receive a New Agreement, but instead will receive a written acknowledgement from the Servicer that nothing is owed pursuant to this Agreement.

5. Each Settlement Class Member who receives a New Agreement shall have the right to pay off such New Agreement by paying to the Servicer an amount equal to (a) the sum of the ISA Amounts for each Make School ISA entered into by the Settlement Class Member that was not cancelled pursuant to the Settlement, (b) minus the total payments made by the Settlement Class Member on any Make School ISAs (whether cancelled or not), (c) multiplied by 0.75 (i.e., 75% of the total ISA Amounts minus total payments) (the "Early Payoff Amount"), provided that such payment is made within 90 days of the transmittal to such Settlement Class Member of the New Agreement. The Settlement Administrator shall notify each Settlement Class Member of the Early Payoff Amount and deadline for payment in a cover letter provided with the New Agreement. Any payments made on a New Agreement during the

90-day period shall be credited against the Early Payoff Amount such that a Settlement Class Member may pay off a New Agreement by paying the Early Payoff Amount less the amounts of any such payments.

6. A Settlement Class Member who is a Yellow Ribbon Claimant and who obtained one or more Tuition ISAs that were funded on or after July 12, 2018 shall have such Tuition ISAs treated in accordance with Section IV.A.1 provided that such Settlement Class Member timely submits a Claim Form with the Yellow Ribbon section completed, and provides a valid copy of a United States Department of Defense form DD-214 confirming such Settlement Class Member's Yellow Ribbon eligibility; and the Settlement Administrator verifies the Settlement Class Member's eligibility based on the Claim Form (Exhibit F) and form DD-214.

7. Defendants shall obtain from the Servicer and provide to Class Counsel a report with sufficient information to allow Class Counsel to validate the calculation of the Principal Amount, payment schedule, and Early Payoff Amount for each New Agreement, and to raise any concerns regarding such calculations. The report shall be provided at least 30 days prior to the Class Notice Deadline, and Class Counsel shall communicate any concerns regarding calculations no later than seven calendar days prior to the Class Notice Deadline.

B. Communications with Settlement Class Members and Collection on ISAs. The Settlement Class Representatives understand and acknowledge that the Servicer is required by law to communicate with Settlement Class Members in certain circumstances, and that such communications are not prohibited by this Agreement. However, defendants Make School SPV and Make School ABC shall ensure that the Servicer does not engage in collection activity as defined by the federal Fair Debt Collection Practices Act while the Parties seek approval of the Settlement. Nothing in this Agreement precludes Settlement Class Members from making

payments during that time should they so desire. Nothing herein shall prohibit the Settlement Administrator or Servicer from carrying out their respective responsibilities under this Agreement.

## **V. FEES, COSTS, AND EXPENSES**

A. Attorneys' Fees and Costs. Class Counsel may apply to the Court no later than three (3) days prior to the Class Notice Deadline for an award of attorneys' fees and costs not to exceed \$450,000.00. Defendants shall not oppose this application provided that the total amount requested does not exceed \$450,000.00. The Settlement is not conditioned upon the Court's approval of the fees or costs sought by Class Counsel, and any appellate proceedings relating solely to the award of attorneys' fees and costs shall not delay the date on which the Judgment becomes Final.

B. Incentive Awards. The Settlement Class Representatives may apply to the Court no later than three (3) days prior to the Class Notice Deadline for incentive awards for their service as Settlement Class Representatives, including compensation for instituting, prosecuting, and bearing the laboring risk of this litigation as Settlement Class Representatives, in an amount not to exceed \$5,000 per Settlement Class Representative. The Settlement is not conditioned upon the Court's approval of the incentive awards sought by the Settlement Class Representatives, and any appellate proceedings relating solely to the incentive awards shall not delay the date on which the Judgment becomes Final.

C. Notice and Settlement Administration Costs. Defendants shall be responsible for payment of all costs and expenses associated with providing Class Notice and administering the Settlement. Defendants shall advance costs and expenses as needed in order to meet all deadlines set forth in this Agreement.

D. Fee Deposit. Defendant Make School SPV shall cause to be deposited with the Settlement Administrator the amount of \$460,000.00 (the “Fee Deposit”) within 30 days after preliminary approval of the Settlement for use in paying attorneys’ fees and costs and incentive awards awarded by the Court. The Fee Deposit shall be held by the Settlement Administrator in a separate trust account held at a bank reasonably acceptable to Defendant Make School SPV. The amount of attorneys’ fees and costs and incentive awards awarded by the Court shall be paid by the Settlement Administrator to Class Counsel in the form of a check made out to “The Sequoia Law Firm” no later than ten (10) Days after the Judgment and the Fee Order become Final, and Class Counsel shall be responsible for paying the incentive awards from this amount. In the event that the Court awards less than the full amount of attorneys’ fees, costs and incentive awards set forth above, the balance of the Fee Deposit shall be returned to Defendant Make School SPV in accordance with instructions from counsel to Defendant Make School SPV.

## **VI. RELEASES**

A. Except as to the rights and obligations provided for under the terms of this Agreement, the Settlement Class Representatives and the Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest and assigns, shall be deemed to have, and by operation of the Judgment shall have, as of the Effective Date, fully released and forever discharged Defendants and each and all of their present, former and future direct and indirect parent companies, affiliates, subsidiaries, lenders, investors, agents, successors, or predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or



any interest in the operation or ownership of Defendants, and all of the aforementioned's respective officers, directors, employees, attorneys, representatives, shareholders, members, agents, vendors and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law (including, without limitation, under any state consumer-protection laws or laws prohibiting unfair or deceptive acts or practices), whether by constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that were alleged in the Third Amended Complaint or that were raised or could have been raised based upon the facts set forth in the Third Amended Complaint. For the avoidance of doubt, this release does not release the Released Parties from any claims arising from acts, omissions, or events occurring after the Effective Date or that do not arise from the facts alleged in the Third Amended Complaint.

B. The Parties intend to limit the foregoing release to claims arising in whole or in part from the facts alleged in the Third Amended Complaint, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen. Accordingly, to the extent that the release is determined to be a general release (and Defendants deny that it is a general release), the Settlement Class Members waive any right to challenge the foregoing release based on Section 1542 of the California Civil Code, or any other applicable law relating to limitations on releases. California Civil Code Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Settlement Class Representatives take no position on whether or not this Section 1542 waiver with respect to the Settlement Class Members should be approved by the Court. In the

event that the Court does not approve the section 1542 waiver with respect to the Settlement Class Members set forth in this paragraph, the section 1542 waiver shall apply only to the Settlement Class Representatives and will remain enforceable in all other respects.

C. Publicity. The Parties shall not seek press or media coverage in connection with this Settlement, including without limitation by issuing press releases or posting on social media regarding the Settlement. In response to unsolicited press or media inquiries, a Party shall respond only by referring to the Settlement Website and/or publicly filed documents. This section shall not prohibit Class Counsel from communicating with the Court, other Parties, objectors, or any Settlement Class Member regarding the Action or the Settlement; nor shall it prohibit Class Counsel from referring to their experience in this case in conversations with potential clients or other attorneys; nor shall it prohibit Class Counsel from mentioning in their resume or advertising materials that they worked on the Action and have experience litigating the issues involved in the Action, provided, however, that Class Counsel must comply with all confidentiality agreements and any Protective Order in the Action in communicating with such Persons.

D. Confidentiality. It is agreed that, within thirty (30) Days after the Effective Date, the originals and all copies of all confidential documents and/or information subject to all confidentiality agreements and any protective orders in the Action shall be returned to the producing party or destroyed. Nothing in this Agreement shall require attorney work product or pleading files to be returned or destroyed.

## **VII. GENERAL MATTERS**

A. No Admission of Liability. It is expressly declared that the Defendants and the Released Parties deny any wrongdoing and any liability whatsoever in the Action and are settling

solely to avoid the cost and inconvenience of litigation.

B. Settlement Conditioned Upon Approval. The Settlement reflected by this Agreement is expressly conditioned on obtaining the Preliminary Approval Order and Final Approval Order without material modification by the Court. In the event of failure to obtain any of the required provisions of such orders, including, without limitation, the denial of any motion seeking preliminary or final approval, this Agreement, except for Sections IV.B, VII.D, and this paragraph, will become null and void and all parties will return, without prejudice, to the *status quo ante* as of the date of this Agreement as if this Agreement had not been entered into. In such event, certification of the Settlement Class will be void; no doctrine of waiver, estoppel or preclusion shall be asserted in any litigated certification proceedings in the Action; and this Agreement and its existence shall be inadmissible to establish any fact relevant to class certification or any alleged liability of the Released Parties for the matters alleged in the Action or for any other purpose. If the Effective Date does not occur, or if this Agreement is terminated pursuant to its terms, neither the Settlement Class Representatives nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed to pay for costs of Class Notice or administration of the Settlement.

C. Effect of Settlement. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties, or of the propriety of certifying a class in the Action; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be a waiver of

any defense or Defendants' right to seek to enforce any arbitration provision in other cases or against Settlement Class Members who opt out of the Settlement. The Released Parties may file this Agreement and/or the Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

D. Evidentiary Preclusion. In the event that the Settlement is not approved as presented, or Defendants terminate the Settlement as permitted herein, the Parties agree that neither the terms of this Agreement nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, Defendants' termination of the Settlement, any failure of the Court to approve the Settlement or any objections or interventions may be used as evidence for any purpose whatsoever.

E. Taxes. Each Settlement Class Member shall have sole responsibility for any and all tax consequences of this Settlement. No opinion regarding the tax consequences of this Settlement, if any, to any individual Settlement Class Member is being given, or will be given, by Defendants or any of the Released Parties. Notwithstanding the foregoing and unless required by a change in federal law, the Servicer will not issue IRS form 1099-Cs to Settlement Class Members in connection with the Settlement, except that a 1099-MISC may be issued to the Settlement Class Representatives in connection with their Incentive Awards, if approved by the Court.

F. Parties Authorized to Enter into Settlement Agreement. The individuals

executing this Agreement on behalf of a party represent and warrant that he, she, or it is fully authorized to execute this Agreement on such party's behalf and to carry out the obligations provided for therein. Each Person executing this Agreement on behalf of a party covenants, warrants, and represents that he or she is and has been fully authorized to do so by such party. Each party represents and warrants that he, she, or it intends to be bound fully by the terms of this Agreement.

G. Ownership/Authority of Defendants. Make School ABC and Make School SPV represent and warrant that, as of the date this Agreement is fully executed, they are the owners and holders of all of the ISAs of the Settlement Class, and that they have the authority to perform their obligations under this Agreement. Make School ABC and Make School SPV agree not to enter into any assignment or other transaction that prevents them from discharging their obligations under this Agreement unless the Court declines to approve the Settlement.

H. Execution. The Parties and their counsel may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all parties had signed the same instrument.

I. Best Efforts. The Parties agree to cooperate in preparing and reviewing the documents and performing all other acts contemplated herein in a timely manner. Class Counsel and Defendants consider the Settlement described herein to be fair, reasonable and adequate will use their best efforts to seek approval of the Settlement by the Court and respond to any objectors, intervenors, or other persons or entities seeking to preclude entry of the Final Approval Order and Judgment, and, if the Settlement is granted final approval, to effectuate its terms. Notwithstanding the foregoing, Defendants shall have no obligation to join in any motions for preliminary or final approval.

J. Time Periods. The time periods and dates described in this Agreement with respect to the giving of Class Notice and hearings will be subject to Court approval and modification by the Court with the consent of the Parties.

K. Governing Law. This Agreement is governed by the laws of the State of California without reference to choice of law principles.

L. No Construction Against Drafter. This Agreement is deemed to have been drafted by all parties, and any rule that a document shall be interpreted against the drafter will not apply to this Agreement.

M. Agreement Binding on Successors in Interest. This Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

N. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements; or writings regarding the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument signed by all parties or their successors in interest or their duly authorized representatives.

## **VIII. MISCELLANEOUS PROVISIONS**

A. Notices. Any notice sent in connection with this Agreement shall be transmitted by e-mail and U.S. Mail as follows:

Plaintiff and Class Counsel:  
Melody L. Sequoia  
The Sequoia Law Firm  
3000 El Camino Real, Suite 4-200  
Palo Alto, California 94306  
melody@sequoialawfirm.com

William E. Kennedy  
The Consumer Law Office of William E. Kennedy  
2797 Park Avenue, Suite 203  
Santa Clara, CA 95050  
wkennedy@kennedyconsumerlaw.com

Make School PBC f/k/a Make School Inc.; Make School ABC, LLC:

Darren Neilson  
Parsons Behle & Latimer  
P.O. Box 910970  
St. George, UT 84791  
dneilson@parsonsbehle.com

Vemo Education, Inc.:

David McDonough  
Wood, Smith, Henning & Berman, LLP  
1401 Willow Pass Road, Suite 700  
Concord, CA 94520  
dmcdonough@wshblaw.com

Make School ISA SPV, LLC:

Scott M. Pearson  
Manatt, Phelps & Phillips, LLP  
2049 Century Park East  
Suite 1700  
Los Angeles, CA 90067  
spears@manatt.com

B. Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

C. The provisions of this Agreement may be waived only in a writing executed by the waiving party. The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver by that party or by any other party of any other prior or subsequent breach of this Agreement.

D. Each party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

E. This Agreement has been carefully read by each of the Parties, or their responsible officers thereof, and its contents are known and understood by each of the Parties.


This Agreement is signed freely by each party executing it.

F. No party to this Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.

G. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall be ineffective but shall not in any way invalidate or otherwise affect any other provision.

H. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

DATED: July 27, 2023

BY:   
Eric Botcher (Jul 28, 2023 07:41 PDT)  
\_\_\_\_\_  
Eric Botcher  
Settlement Class Representative

DATED: July 27, 2023

BY: \_\_\_\_\_  
Samuel Galizia  
Settlement Class Representative

DATED: July \_\_\_\_, 2023

MAKE SCHOOL PBC F/K/A MAKE SCHOOL  
INC. and MAKE SCHOOL ABC, LLC,

BY: \_\_\_\_\_

ITS: \_\_\_\_\_



F. No party to this Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.


G. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall be ineffective but shall not in any way invalidate or otherwise affect any other provision.

H. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

DATED: July 27, 2023

BY: \_\_\_\_\_  
Eric Botcher  
Settlement Class Representative

DATED: July 27, 2023

BY:   
Samuel Galizia (Jul 27, 2023 17:32 PDT)  
\_\_\_\_\_  
Samuel Galizia  
Settlement Class Representative

DATED: July    , 2023

MAKE SCHOOL PBC F/K/A MAKE SCHOOL INC. and MAKE SCHOOL ABC, LLC,

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

F. No party to this Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.

G. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall be ineffective but shall not in any way invalidate or otherwise affect any other provision.

H. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

DATED: July \_\_\_\_, 2023

BY: \_\_\_\_\_  
Eric Botcher  
Settlement Class Representative

DATED: July \_\_\_\_, 2023

BY: \_\_\_\_\_  
Samuel Galizia  
Settlement Class Representative

DATED: July 28, 2023

MAKE SCHOOL PBC F/K/A MAKE SCHOOL  
INC. and MAKE SCHOOL ABC, LLC,

BY: Nate McEber

ITS: Representative

DATED: July \_\_, 2023

VEMO EDUCATION, INC.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATED: July 28, 2023

MAKE SCHOOL ISA SPV, LLC

BY: Nate McEber

ITS: Representative

AGREED AS TO CONFIDENTIALITY AND OTHERWISE APPROVED AS TO FORM:

DATED: July \_\_, 2023

THE SEQUOIA LAW FIRM  
Melody L. Sequoia

BY: \_\_\_\_\_  
Attorney for Plaintiffs

DATED: July \_\_, 2023

THE CONSUMER LAW OFFICE OF WILLIAM  
E. KENNEDY  
William E. Kennedy

BY: \_\_\_\_\_  
Attorney for Plaintiffs

DATED: July 28, 2023

VEMO EDUCATION, INC.

BY: B. Deh

ITS: Director

DATED: July \_\_, 2023

MAKE SCHOOL ISA SPV, LLC

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

AGREED AS TO CONFIDENTIALITY AND OTHERWISE APPROVED AS TO FORM:

DATED: July \_\_, 2023

THE SEQUOIA LAW FIRM  
Melody L. Sequoia

BY: \_\_\_\_\_  
Attorney for Plaintiffs

DATED: July \_\_, 2023

THE CONSUMER LAW OFFICE OF WILLIAM  
E. KENNEDY  
William E. Kennedy

BY: \_\_\_\_\_  
Attorney for Plaintiffs

DATED: July \_\_, 2023

VEMO EDUCATION, INC.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATED: July \_\_, 2023

MAKE SCHOOL ISA SPV, LLC

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

AGREED AS TO CONFIDENTIALITY AND OTHERWISE APPROVED AS TO FORM:

DATED: July 27, 2023

THE SEQUOIA LAW FIRM  
Melody L. Sequoia

BY: Melody Sequoia  
Attorney for Plaintiffs

DATED: July 28, 2023

THE CONSUMER LAW OFFICE OF WILLIAM  
E. KENNEDY  
William E. Kennedy

BY: William E. Kennedy  
Attorney for Plaintiffs

# **EXHIBIT A**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ERIC BOTCHER and SAMUEL D. GALIZIA,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MAKE SCHOOL PBC f/k/a MAKE SCHOOL  
INC., MAKE SCHOOL ABC, LLC, MAKE  
SCHOOL ISA SPV, LLC, VEMO  
EDUCATION, INC., and DOES 1 through 10,

Defendants.

Case No. CGC-21-592710

**CLASS ACTION**

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT,  
CONDITIONALLY CERTIFYING  
CLASS, AND APPOINTING CLASS  
COUNSEL**

Case Assigned for All Purposes to  
Hon. Ethan P. Schulman  
Dept. 302

1 WHEREAS, Plaintiffs Eric Botcher and Samuel Galizia (the “Settlement Class  
2 Representatives”) and Defendants Make School PBC f/k/a Make School Inc., Make School ABC,  
3 LLC, Make School ISA SPV, LLC, and Vemo Education, Inc. (the “Defendants”), have agreed,  
4 subject to Court approval after notice and a hearing, to settle this Action upon the terms and  
5 conditions set forth in the Agreement lodged with this Court; and

6 WHEREAS, for purposes of this Order, capitalized terms shall have the meaning ascribed  
7 to them in the Agreement.

8 NOW, THEREFORE, based upon this Court’s review of the Agreement and all of the  
9 files, records, and proceedings herein, and it appearing to the Court, upon preliminary  
10 examination, that the Agreement and Settlement appear fair, reasonable, and adequate, and within  
11 the range of possible approval, and that a hearing should and will be held after notice to the  
12 Settlement Class (as described in Paragraph 7 below) to confirm that the Agreement and  
13 Settlement are fair, reasonable, and adequate, and to determine whether the Settlement should be  
14 approved and final judgment entered in this Action based upon the Agreement;

15 **IT IS HEREBY ORDERED THAT:**

16 **1. Preliminary Approval of Proposed Settlement.** The Agreement, including all  
17 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate and within the range  
18 of possible approval. The Court finds that: (a) the Agreement resulted from extensive arm’s  
19 length negotiations; and (b) the Agreement is sufficient to warrant notice thereof to Settlement  
20 Class Members and a full hearing on the approval of the Settlement.

21 **2. Third Amended Complaint.** The Court hereby grants Plaintiffs’ request, made in  
22 its Motion for Preliminary Approval, to file a Third Amended Complaint in this Action for  
23 settlement purposes only.

24 **3. Class Certification for Settlement Purposes.** Pursuant to California Code of  
25 Civil Procedure Section 382, the Court conditionally certifies, for settlement purposes only, the  
26 following Settlement Class:

27 All Persons who obtained at least one income share agreement from Make School  
28 on or after June 1, 2015 that remained outstanding as of April 28, 2023. Excluded



1 from the Settlement Class are the judges to whom the Action is assigned and the  
2 members of their staff or immediate family.

3 In connection with this conditional certification, the Court makes the following preliminary  
4 findings:

5 (a) The members of the Settlement Class appear to be so numerous that joinder  
6 of all members is impracticable;

7 (b) There appear to be questions of law or fact common to the Settlement Class  
8 for purposes of determining whether this Settlement should be approved;

9 (c) The claims of the Settlement Class Representatives appear to be typical of  
10 the claims being resolved through the proposed Settlement;

11 (d) The Settlement Class Representatives appear to be capable of fairly and  
12 adequately protecting the interests of the Settlement Class Members in connection with the  
13 proposed Settlement;

14 (e) For purposes of determining whether the Settlement is fair, reasonable, and  
15 adequate, common questions of law and fact appear to predominate over questions affecting only  
16 individual Settlement Class Members. Accordingly, the Settlement Class appears to be  
17 sufficiently cohesive to warrant settlement by representation;

18 (f) For purposes of settlement, certification of the Settlement Class appears to  
19 be superior to other available methods for the fair and efficient settlement of the claims of the  
20 Settlement Class Members.

21 **4. Class Representatives.** Eric Botcher and Samuel Galizia are designated as class  
22 representatives for the Settlement Class.

23 **5. Class Counsel.** The Court appoints Melody L. Sequoia of The Sequoia Law Firm,  
24 and William E. Kennedy of the Consumer Law Office of William E. Kennedy as counsel for the  
25 Settlement Class. The Court finds that counsel is competent and capable of exercising all  
26 responsibilities as Class Counsel.

27 **6. Settlement Hearing.** A final approval hearing (the “Settlement Hearing”) shall be  
28 held before the Honorable Ethan P. Schulman, in Department 304 of the Superior Court for the

1 County of San Francisco, 400 McAllister Street, San Francisco, CA 94102 on \_\_\_\_\_  
2 2023 at \_\_:\_\_, as set forth in the notice to the Settlement Class (described in Paragraph 7 below),  
3 to determine whether the Agreement is fair, reasonable, and adequate and should be approved.  
4 Papers in support of final approval of the Agreement and Class Counsel’s application for an  
5 award of attorneys’ fees and costs and incentive awards for the Settlement Class Representative  
6 and plaintiffs Eric Botcher and Sam Galizia (the “Fee Application”) shall be filed with the Court  
7 according to the schedule set forth in Paragraph 13 below. The Settlement Hearing may be  
8 postponed, adjourned, or continued by order of the Court without further notice to the Settlement  
9 Class. After the Settlement Hearing, the Court may enter a settlement order and final judgment in  
10 accordance with the Agreement that will adjudicate the rights of the Settlement Class Members  
11 with respect to the claims being settled.

12 **7. Class Notice.** Class Notice shall be provided by the Settlement Administrator  
13 within forty-five (45) Days following entry of this Order (the “Notice Deadline”). Within fifteen  
14 (15) Days after entry of this Order; the Servicer shall provide the Settlement Administrator with  
15 the Settlement Class List in a format reasonably requested by the Settlement Administrator.

16 **(a) E-Mailed Notice.** No later than the Class Notice Deadline, the Settlement  
17 Administrator shall e-mail the E-Mailed Notice substantially in the form appended to the  
18 Agreement as Exhibit D to all Settlement Class Members for whom an e-mail address was  
19 provided. A reminder e-mail of the E-Mailed Notice shall be sent at least seven (7) Days after the  
20 Notice Deadline. In providing the foregoing E-Mailed notice, the Settlement Administrator shall  
21 seek to maximize the chances of messages being received and opened by sending e-mails on dates  
22 the Settlement Administrator believes are optimal, such as by using sending methods likely to  
23 avoid spam filters (such as sending e-mails in small batches), and by updating addresses on the  
24 Settlement Class List using methods customary in the settlement administration industry,  
25 provided that such methods are cost-effective and reasonable under the circumstances.

26 **(b) Mailed Notice.** No later than the Class Notice Deadline, the Settlement  
27 Administrator shall mail the Mailed Notice substantially in the form appended to the Agreement  
28 as Exhibit D to all Settlement Class Members in accordance with the terms of the Settlement

1 Agreement. The Settlement Administrator shall seek to maximize the effectiveness of the  
2 mailing by conducting a National Change of Address search and a skip trace using the Accurint  
3 database to update mailing addresses before mailing. The Settlement Administrator shall  
4 promptly send Mailed Notices to any forwarding addresses provided on mail returned to sender.  
5 If, prior to the Opt-Out and Objection Deadline, any Mailed Notice is returned as having been  
6 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace  
7 using a database other than Accurint and re-send the Mailed Notice and Claim Form to the new or  
8 different address within three (3) days. However, if a determination is made in good faith by the  
9 Settlement Administrator that it is not possible to further update any particular Settlement Class  
10 Member's address in sufficient time to mail the Class Notice at least ten (10) Days before the  
11 Notice Deadline, then the Settlement Administrator need make no further efforts to provide  
12 further notice to such Class Member.

13           (c)     **Internet Notice.** The Settlement Administrator shall establish an Internet  
14 website for communications with Class Members, using a domain name and content approved in  
15 writing by Class Counsel and Defendants' counsel. The website prominently shall display the  
16 Internet Notice substantially in the form appended to the Agreement as Exhibit E. The website  
17 shall also make available this Agreement, the Third Amended Class Action Complaint, the toll-  
18 free number for the Settlement Administrator, contact information for Class Counsel, and any  
19 other materials the Parties agree in writing to include. The Settlement Website shall include a  
20 web portal in which Settlement Class Members can access individualized information by using a  
21 unique identifier and password (provided in the E-Mail and Mailed Notices) so they can  
22 understand how specifically the Settlement will impact them, including which ISAs would be  
23 canceled, if any; the funding amounts, payment caps, and income share percentages for each ISA;  
24 the New Agreement's principal balance and monthly payment amounts for the New Agreement  
25 for such Settlement Class Member assuming a 180-month term; and the Early Payoff Amount) –  
26 with appropriate qualifications such as that the numbers are based on data as of a specific date.  
27 The Settlement Website shall be made accessible by the date E-Mailed Notice is e-mailed, and  
28 shall remain accessible for not less than 180 days after the Effective Date. The Settlement

1 Website shall allow Settlement Class Members to submit Claim Forms electronically, but  
2 Settlement Class Members also may submit Claim Forms by e-mail or U.S. mail.

3           **(d) Toll-Free Number.** The Settlement Administrator shall establish a  
4 toll-free telephone number Settlement Class Members may call to obtain additional information  
5 such as answers to frequently asked questions. The toll-free number may utilize interactive voice  
6 response technology and recorded messages rather than live operators, but the Settlement  
7 Administrator shall ensure that Settlement Class Members who call the toll-free number may  
8 request (and receive) copies of any of the materials on the Internet website. The toll-free number  
9 shall be operational by the date E-Mail Notice initially is e-mailed, and shall remain operational  
10 for not less than 180 days after the Effective Date.

11           **8. Findings Concerning Class Notice.** The Court finds that the foregoing form of  
12 class notice and the manner of its dissemination is the best practicable notice under the  
13 circumstances and is reasonably calculated, under all the circumstances, to apprise Settlement  
14 Class Members of the pendency of this Action and their right to object to or exclude themselves  
15 from the Settlement Class. The Court further finds that the class notice program is reasonable,  
16 that it constitutes due, adequate and sufficient notice to all person is entitled to receive notice and  
17 that it meets the requirements of due process and California Rule of Court 3.769.

18           **9. Exclusion from Settlement Class.** Each Settlement Class Member who wishes to  
19 be excluded from the Settlement Class and follows the procedures set forth in this Paragraph shall  
20 be excluded. Any potential member of the Settlement Class must mail a written request for  
21 exclusion to CPT Group, 50 Corporate Park, Irvine, CA 92606. All such written requests must be  
22 postmarked by the Opt-Out and Objection Deadline of 90 days after the Notice Deadline. The  
23 exclusion request must: (i) be signed by a Settlement Class Member; (ii) include the full name,  
24 address, and (if known) Launch Servicing, LLC account number(s) of the Settlement Class  
25 Member requesting exclusion; and (iii) include a request to be excluded from the Settlement  
26 Class in *Aguocha, et al. v. Make School PBC, et al.* In the event of any dispute as to whether or  
27 not a Settlement Class Member has properly opted out, the parties shall meet and confer and  
28

1 attempt to resolve the dispute; any such dispute the parties are not able to resolve may be  
2 submitted to the Court for resolution.

3 **10.** All persons who properly make requests for exclusion from the Settlement Class  
4 shall not be Settlement Class Members and shall have no rights with respect to the Settlement  
5 should it be approved. All Settlement Class Members who do not opt out in accordance with the  
6 terms set forth herein will be bound by all determinations and judgments in the Action.

7 **11.** If the number of Settlement Class Members who opt out exceeds fifteen percent  
8 (15%) of the total number of Settlement Class Members, then Defendants in their sole discretion  
9 will have the right to terminate the Settlement by giving written notice to Class Counsel within  
10 twenty one (21) Days after the Opt-Out and Objection Deadline. In the event that the Settlement  
11 is terminated pursuant to this provision, the Parties will be returned to the status quo ante as if no  
12 settlement had been negotiated or entered into; provided, however, that all costs of Class Notice  
13 and all costs of administering the Settlement paid or incurred prior to termination shall be  
14 nonrefundable.

15 **12. Objections and Appearances.**

16 **(a) Written Objections.** Any potential member of the Settlement Class who  
17 has not timely submitted a written request for exclusion from the Settlement Class, and thus is a  
18 Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the  
19 Settlement or the Fee Application. Settlement Class Members may do so either on their own or  
20 through counsel hired at their own expense. Any Settlement Class Member who wishes to object  
21 to the Settlement or the Fee Application should, on or before \_\_\_\_\_, 2023, file a written  
22 objection with the Court and with a copy to the Settlement Administrator: CPT Group, 50  
23 Corporate Park, Irvine, CA 92606. If any objection is rejected or overruled, the objecting  
24 Settlement Class Member will be bound by the Judgment as if he or she had not objected. Any  
25 person who requests exclusion from the Settlement Class may not object. If any Settlement Class  
26 Member submits a request for exclusion and also an objection, the request for exclusion shall take  
27 precedence and that person shall not be a Settlement Class Member.  
28

1                   **(b) Appearance at Settlement Hearing.** Whether or not a written objection is  
2 made, any Settlement Class Member may appear at the Settlement Hearing, either in person or  
3 through counsel hired at the Settlement Class Member’s expense, to object to the fairness,  
4 reasonableness or adequacy of the Settlement or the Fee Application.

5                   **13. Further Briefing.** Class Counsel’s application for attorneys’ fees and costs, and  
6 the Settlement Class Representatives’ application for incentive awards (together, the “Fee  
7 Requests”), shall be filed no later than three (3) days prior to the Class Notice Deadline. Any  
8 written objections to the Settlement and/or Fee Requests shall be filed with the Court on or before  
9 \_\_\_\_\_. Briefing in support of final approval of the Settlement, responding to any  
10 objections, and in further support of the Fee Requests shall be filed with the Court on or before  
11 \_\_\_\_\_.

12                   **14. Effect of Failure to Approve the Agreement.** In the event the Settlement is not  
13 approved by the Court, or for any reason the Parties fail to obtain a Judgment as contemplated in  
14 the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the  
15 following shall apply:

16                   (a) All orders and findings entered in connection with the Agreement shall  
17 become null and void and have no further force and effect, shall not be used or referred to for any  
18 purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

19                   (b) The conditional certification of the Settlement Class pursuant to this Order  
20 shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be  
21 asserted in any litigated certification proceedings in the Action; and the Agreement and its  
22 existence shall be inadmissible to establish any fact relevant to class certification or any alleged  
23 liability of the Defendants for the matters alleged in the Actions or for any other purpose;

24                   (c) Nothing contained in this Order is, or may be construed as, any admission  
25 or concession by or against the Defendants or the Settlement Class Representatives on any point  
26 of fact or law; and

27                   (d) Neither the terms of the Agreement nor any publicly disseminated  
28 information regarding the Settlement, including, without limitation, the Class Notice, court

1 filings, orders or public statements, may be used as evidence for any purpose whatsoever. In  
2 addition, neither the fact of, nor any documents relating to, Defendants' termination of the  
3 Agreement, any failure of the Court to approve the Settlement, or any objections or interventions  
4 may be used as evidence for any purpose whatsoever.

5 **15. Stay of Proceedings.** All proceedings in this Action are stayed until further order  
6 of the Court, except as may be necessary to implement the Settlement or comply with the terms of  
7 the Settlement. Pending determination of whether the Settlement should be granted final  
8 approval, no party shall pursue in this Action any claims or defenses otherwise available to them  
9 in the Action, and no Settlement Class Member, either directly, on a representative basis, or in  
10 any other capacity, will commence or prosecute against any of the Released Parties any action or  
11 proceeding asserting any of the Released Claims.

12 **IT IS SO ORDERED.**

13  
14  
15 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
16 Hon. Ethan P. Schulman  
17 JUDGE OF THE SUPERIOR COURT  
18  
19  
20  
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25  
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27  
28

## **EXHIBIT B**



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13 *Attorneys for Plaintiffs and the putative class.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN FRANCISCO**

16 ERIC BOTCHER, and SAMUEL D.  
17 GALIZIA, individually and on behalf of all  
18 others similarly situated.

19 Plaintiffs,

20 v.

21 MAKE SCHOOL PBC f/k/a MAKE SCHOOL  
22 INC., MAKE SCHOOL ABC, LLC, MAKE  
23 SCHOOL ISA SPV, LLC, VEMO  
24 EDUCATION, INC., and DOES 1 through 10,

25 Defendants.

Case No. CGC-21-592710

**THIRD AMENDED CLASS  
ACTION COMPLAINT FOR**

1. **DECLARATORY AND  
INJUNCTIVE RELIEF**
2. **VIOLATION OF  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200**
3. **VIOLATION OF  
CALIFORNIA BUSINESS  
AND PROFESSIONS  
CODE § 17500**
4. **VIOLATION OF CAL. CIV.  
CODE §§ 1788-1788.3**
5. **VIOLATION OF CAL. CIV.  
CODE §§ 1788.101 *et. seq.***
6. **UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiffs ERIC BOTCHER and SAMUEL D. GALIZIA, by and through their attorneys  
2 and on behalf of themselves and all others similarly situated, hereby submits this Class Action  
3 Complaint against Defendants MAKE SCHOOL PBC f/k/a MAKE SCHOOL, INC., MAKE  
4 SCHOOL ABC, LLC, MAKE SCHOOL ISA SPV, LLC, VEMO EDUCATION, INC., and  
5 DOES 1 through 10, and allege as follows:

6 **PRELIMINARY STATEMENT**

7 1. Plaintiffs are former students of Defendant Make School, Inc. (“Make School”), a  
8 private start-up computer science college in San Francisco, California. Plaintiffs attended Make  
9 School between 2017 and 2019.

10 2. During this time, Make School aggressively marketed and promoted Defendant  
11 Vemo Education Inc.’s income share agreements, or ISAs, as an alternative to traditional student  
12 loans. At its core, an ISAs is a consumer financial product in which the borrower is obligated to  
13 pay a percentage of his or her future income in exchange for not having to pay tuition up front.  
14 ISA providers have tried to evade regulatory oversight by claiming that ISAs are not loans or  
15 credit, but that claim has been debunked by Federal and State regulators.

16 3. In marketing and promoting its ISA tuition model, Make School promoted the  
17 Vemo ISA agreements as cost-efficient and beneficial for students. But the ISAs offered to  
18 Make School students, including the Plaintiffs, were predatory, risky, and exorbitantly  
19 expensive. To induce students to sign ISAs, Make School and Vemo concealed and  
20 misrepresented the actual long-term cost of those agreements, which, if used to finance the entire  
21 two-year program plus living expenses, could cost over a quarter of a million dollars, or four  
22 times or more than the purported market rate of the educational services provided over just two  
23 years. Make School also misrepresented and concealed the nature of its financial interest in  
24 students’ success, including by falsely representing that Make School’s “incentives” were  
25 aligned with the students because it only got paid after students found employment and got paid.  
26 The truth is, Make School’s incentive was to sign as many students up for ISAs as possible so  
27 that it could package and sell those ISAs to investors and take out loans secured by the ISAs to  
28

1 fund operations.

2 4. Make School further concealed the fact that up until July of 2018, it was an  
3 unaccredited institution without approval to operate in the State pursuant to Education  
4 Code § 94886. As such, any agreement entered into prior to that date is void and unenforceable.  
5 *Id.* § 94917. California’s regulator of private post-secondary education in May of 2018 ordered  
6 Make School to cease operating and provide a refund to students who had enrolled at Make  
7 School prior to Make School receiving approval to operate. Make School disregarded that order  
8 and never cancelled the ISAs of students who attended Make School while Make School was  
9 operating illegally. Instead, Vemo, as the purported servicer of the ISA agreements, has  
10 attempted to and will continue attempting to collect 25% or more of students’ pre-tax income  
11 under ISAs signed before Make School had approval to operate. In many instances, Vemo is  
12 attempting to collect over \$3,000 per month from students, which is more than their monthly rent  
13 or mortgage. Even with a full-time job, many students are struggling to pay for basic necessities.

14 5. Once Make School did come into compliance and obtain approval to operate in  
15 the State, it only held that approval for approximately one year. In July of 2019, Make School  
16 surrendered or rescind its BPPE approval. Starting in July of 2019, and continuing through 2020  
17 and 2021, Make School continued to operate illegally in the state and push expensive ISA  
18 agreements on students without fully disclosing the true cost of those agreements. Make School  
19 contends that it did not need BPPE approval because it entered into an “incubation relationship”  
20 with Dominican University of California, an accredited non-profit institution. But as set forth  
21 below, documents received in this litigation from Dominican and the BPPE demonstrate that  
22 Make School was required to, but did not, keep its BPPE approval to operate while it had an  
23 incubation relationship with Dominican. As such, any agreement entered into after Make School  
24 rescinded its BPPE approval is void and unenforceable. *Id.* § 94917.

25 6. The Plaintiff Sam Galizia and members of the putative class who signed ISAs  
26 while the school did not have approval to operate in the State seeks, among other things, (i) a  
27 declaration that any ISAs entered into prior to Make School receiving approval to operate are  
28

1 invalid and unenforceable, (ii) a declaration that any ISAs entered into after Make School  
2 rescinded its BPPE approval to operate are invalid and unenforceable; (iii) a preliminary and  
3 permanent injunction restraining and enjoining the current holder of those ISA contracts from  
4 enforcing those ISAs, or, if Defendants are not the current owners of the ISAs, enjoin the current  
5 owner(s) from ever collecting on the ISAs (iv) restitution and disgorgement of all monies  
6 wrongfully collected pursuant to those ISAs, and (iv) attorneys' fees and costs pursuant to Code  
7 of Civil Procedure § 1021.5.

8 7. In addition, Plaintiffs bring this action under the California Unfair Competition  
9 Law (Cal. Bus. & Prof. Code § 17200) and the California False Advertising Law (Cal. Bus. &  
10 Prof. Code § 17500) stemming from Make School and Vemo's false, deceptive, and misleading  
11 statements concerning Make School's ISA program and its financial interest in students' success.  
12 Plaintiffs seek cancellation of theirs and other students' ISA agreements, disgorgement of all the  
13 ill-gotten gains obtained to the detriment of Make School students, all available damages,  
14 punitive damages, declaratory and public injunctive relief, and all other available relief.

15  
16 **PARTIES**

17 8. Defendant MAKE SCHOOL PBC f/k/a MAKE SCHOOL, INC. ("Make School")  
18 is a California corporation with its principal place of business in San Francisco, California. At  
19 all relevant times, Make School was a venture-backed, for-profit startup college offering a two-  
20 year computer science program. On or about August 14, 2018, Make School, Inc. changed its  
21 name to Make School PBC.

22 9. Defendant VEMO EDUCATION, INC. ("Vemo") is a Delaware for-profit  
23 company with its principal place of business in Arlington, Virginia. Vemo provides income  
24 share agreement related services to a wide array of postsecondary educational institutions, from  
25 universities to short-term, unaccredited vocational programs based across the country, including  
26 California.

27 10. Defendant MAKE SCHOOL ABC, LLC is a Massachusetts limited liability  
28

1 company with its principal place of business in Boston, Massachusetts. MAKE SCHOOL ABC,  
2 LLC was formed in June of 2021 for the sole purpose of being the assignee to receive all assets  
3 and liabilities from MAKE SCHOOL, INC. for the benefit of Make School's creditors pursuant  
4 to California law. Plaintiffs are informed and believe, and thereon allege, that all of Make  
5 School's ISA contracts are owned by MAKE SCHOOL ABC, INC. through its wholly-owned  
6 subsidiary, Defendant MAKE SCHOOL ISA SPV, LLC.

7 11. Plaintiffs' claims are asserted against Defendants MAKE SCHOOL ABC, LLC  
8 and/or MAKE SCHOOL ISA SPV, LLC pursuant to the FTC holder rule and related California  
9 law, which preserves Plaintiffs' right to assert all available claims and defenses against the  
10 holder of the ISAs even if those contracts are assigned to a third party.

11 12. Defendants sued herein as DOES 1-10 are individuals or corporations who may  
12 own all or a portion of Plaintiffs' ISAs and/or any other ISA used to finance Make School's  
13 program.

14  
15 **The Plaintiffs**

16 13. Plaintiff Samuel D. Galizia is an individual currently residing in Los Angeles  
17 County, California. Galizia attended Make School from September 2017 to November 2019, and  
18 during that time he lived in San Francisco County, California. Galizia withdrew from Make  
19 School after one year because they were not provided with the educational services promised  
20 and/or the program was too expensive and not necessary for them to become gainfully employed.  
21 Galizia signed five ISAs with Make School—two dated August 30, 2017, one dated December 1,  
22 2017, and two dated August 17, 2018.

23 14. Plaintiff Eric Botcher is an individual currently residing in Sacramento County,  
24 California. Mr. Botcher attended Make School for one year, beginning in August of 2018, and  
25 during that time he lived in Alameda County, California. Mr. Botcher withdrew from Make  
26 School after one year because he was not provided with the educational services promised and/or  
27 the program was too expensive and not necessary for him to become gainfully employed. Mr.

1 Botcher signed three ISAs with Make School dated August 17, 2018, August 19, 2018, and April  
2 26, 2019. Mr. Botcher is a military veteran, serving in the United States Army for approximately  
3 four years.

#### 4 JURISDICTION AND VENUE

5 15. This Court has jurisdiction over Plaintiffs' claims pursuant to California Code of  
6 Civil Procedure section 410.10 and 410.40.

7 16. Venue is proper in this judicial district pursuant to California Code of Civil  
8 Procedure section 395(a) because a substantial part of the events giving rise to the claims herein  
9 occurred in San Francisco County and because Defendant Make School has or had its principal  
10 place of business in San Francisco County.

#### 11 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

##### 12 **A. Make School, Inc.**

13 17. At all relevant times, Make School was an experimental, venture-backed, for-  
14 profit startup college in San Francisco, California.

15 18. Make School was originally founded in 2012 as "MakeGamesWithUS" by co-  
16 founders Jeremy Rossmann and Ashutosh Desai. In 2014, the company changed its mission and  
17 also changed its name to Make School. In promotional videos, Make School has been referred to  
18 as an "anti-College" or as a "college replacement for founders and developers."<sup>1</sup>

19 19. For over four years following Make School's inception (from 2014 until mid-  
20 2018), Make School operated without any accreditation from a regional accrediting institution.

21 20. In addition, from 2014 to mid-2018, Make School operated without the required  
22 approval to operate from the California Bureau of Private Postsecondary Education (the "BPPE")  
23 in violation of the California Private Postsecondary Education Act of 2009. *See* Cal. Ed. Code §  
24 94886 (a postsecondary institution "shall not open, conduct, or do business as a private  
25 postsecondary educational institution in [California] without obtaining approval to operate.")

26 21. Make School briefly obtained BPPE approval to operate from July 13, 2018 to  
27

28 <sup>1</sup> <https://www.youtube.com/watch?v=6rT00QXqZak> (posted December 3, 2015).

1 July 19, 2019, when it voluntarily rescinded its BPPE approval to operate.

2 22. Make School offered a two-year Bachelors Degree in applied computer science  
3 that emphasized “practical computer science skills” (such as building apps) as opposed to more  
4 theoretical concepts taught in traditional Computer Science curriculums found at four-year  
5 universities. According to one news article, Make School was “a combination of a short-term  
6 coding bootcamp and a traditional four-year university.”<sup>2</sup>

7 **B. Make School’s ISA Tuition Model**

8 23. While Make School was operating as an unaccredited and unapproved institution,  
9 Make School charged students between \$50,000 and \$70,000 in tuition depending on the  
10 academic year enrolled. That is more than the average in-state tuition costs for obtaining a four-  
11 year degree from a University of California (“UC”) institution or from a California State  
12 University during the same time period. Per year, Make School’s tuition costs exceed many  
13 private university tuition rates, including Stanford University’s prestigious undergraduate  
14 program.

15 24. One of the main differences between Make School and other colleges is the way  
16 in which Make School collects tuition. Between 2016 and 2021, Make School, in partnership  
17 with Vemo, encouraged students to pay for tuition and living expenses with educational income  
18 share agreements, or “ISAs.”

19 25. At their core, ISAs are consumer financial products in which students promise to  
20 pay a percentage of their future income in exchange for money to pay their tuition and/or living  
21 expenses.

22 26. While proponents of ISAs tout them as “innovative,” in substance they are no  
23 different than traditional student loan products. Like with a traditional loan, a student’s account  
24 is credited, and no money is due up front for tuition or fees. In exchange, the student promises to  
25 repay the tuition at a later time (*i.e.*, after graduation or after leaving the program). Under an  
26

---

27 <sup>2</sup> [https://www.bizjournals.com/sanfrancisco/news/2018/11/27/make-school-dominican-accredited-](https://www.bizjournals.com/sanfrancisco/news/2018/11/27/make-school-dominican-accredited-bachelors-degrees.html)  
28 [bachelors-degrees.html](https://www.bizjournals.com/sanfrancisco/news/2018/11/27/make-school-dominican-accredited-bachelors-degrees.html) (Nov. 27, 2018).

1 ISA, students repay the loan by either:

2 a. paying a fixed “payment cap” that is higher than the sum the student received  
3 (sometimes 2-4 times as much in the case of Make School’s ISAs), or

4 b. making payments, calculated according to a formula in the agreement that is  
5 based on the student’s income, over a period determined in the agreement.

6 27. Make School and Vemo have tried to evade regulatory oversight by claiming that  
7 ISAs are not loans or credit, but that claim is false and misleading. Substantively, ISAs are no  
8 different from traditional student loans in which a student’s account is credited and no money is  
9 due up front for tuition or fees and in exchange, the student promises to repay the tuition at a  
10 later time (*i.e.*, after graduation or after leaving the program). In fact, since the filing of the  
11 original complaint in this action, both the California Department of Financial Protection and  
12 Innovation (“DFPI”) and the Consumer Financial Protection Bureau (“CFPB”) have found that  
13 ISAs are loans and/or debt instruments.<sup>3</sup>

14 28. Make School partnered with Defendant Vemo to design and implement the ISA  
15 program, which could be used to fund not only tuition, but also living expenses so that students  
16 could afford to live in San Francisco while attending school full-time. In one informational  
17 session in the Spring of 2017 on income share agreements, Make School co-founder Jeremy  
18 Rossmann, touted that Make School and Vemo were “literally the world pioneers in income  
19 share agreements” and that Make School “invented some of this stuff [*i.e.*, income share  
20 agreements] together with Vemo.”

21 29. Vemo is a for-profit company that, designs, implements, and manages ISA  
22 programs for its partners. Plaintiffs are informed and believe, and thereon allege, that the ISA  
23 contracts are primarily drafted by Vemo.

24 30. Plaintiffs are informed and believe, and thereon allege, that postsecondary  
25

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26 <sup>3</sup> *In the Matter of Student Loan Servicing Act License Application of Meratas Inc.*, NMLS No. 2120180, Consent  
27 Order at ¶ M (Ca. Dep’t of Fin. Prot. And Innovation Aug. 5, 2021), available at: [https://dfpi.ca.gov/wp-](https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf)  
28 [content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf](https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf) (last visited 1/24/22); *In the Matter of Better Future Forward, Inc., et. al.*, No. 2021-CFPB-0005, Consent Order at ¶ 23 (Sept. 7, 2021) (finding that “ISAs are loans and do create debt.”).



1 educational institutions like Make School that participate in Vemo's ISA program agree to  
2 market and sell the ISA contracts to students using Vemo marketing materials.

3 31. After a student enters into an ISA contract, the educational institution pays a fee  
4 to Vemo in exchange for Vemo (1) collecting money from the student after the student  
5 completes or leaves the computer science program, and (2) returning some portion of that money  
6 to the institution and/or investors who own some portion of Make School's ISA pool.

7 32. While Make School's ISAs avoid terminology associated with credit and loans  
8 (such as "principal" and "interest") and claim not to be "credit" or "loans," they are just another  
9 type of student loan or credit agreement. The only difference between traditional income-based  
10 repayment on a conventional student loan and Make School's ISAs is that the cost of Make  
11 School's ISA program is exorbitant and Make School used deceptive rhetoric and marketing that  
12 obscured the true nature of these agreements, as set forth in more detail below.

13  
14 **C. 2015-2018: Make School Induces Plaintiffs to Sign Multiple Income Share  
15 Agreements Without Disclosing the True Nature of Those Agreements**

16 33. Around the time Plaintiffs were considering attending Make School, their  
17 payment options were either to (1) pay \$30,000 to \$40,000 for year one, and \$20,000 to \$30,000  
18 for year two depending on the year enrolled, for a total of \$50,000 to \$70,000 in tuition, plus  
19 living expenses while attending school full-time, or (2) enter into ISA agreements with Make  
20 School to finance that tuition and living expenses.

21 34. During that time, Make School aggressively marketed and promoted Vemo's ISA  
22 agreements as superior to traditional tuition and/or student loan models.

23 35. The ISAs offered to Make School students were primarily marketed to  
24 undergraduate students, including those in their late teens and early twenties who have not had  
25 significant experience with financial products, much less the complex shopping involved in  
26 selecting between ISAs and other options to finance their education. Moreover, compared to the  
27 technology industry generally, prospective, former, and current Make School students are  
28 disproportionately from non-affluent families who lack the resources to pay out-of-pocket for a

1 Make School program or for a traditional four-year university. According to Make School’s own  
2 promotional statements, 40% of students were underrepresented minority students and 50%  
3 come from low-income families.<sup>4</sup>

4 36. In marketing its ISA model, Make School used marketing tools that were  
5 endorsed and promoted by Vemo, and used deceptive rhetoric and marketing that concealed the  
6 nature and cumulative cost of those agreements, as described below.

7 *Make School and Vemo’s Marketing of the ISA Agreements as Not Debt or Credit*

8 37. In conjunction with Vemo, Make School falsely claimed that its ISA agreements  
9 were not loans or credit. For example, in one widely-disseminated promotional video titled  
10 “Make School — The Future of Higher Education,” a Make School spokesperson made the  
11 following statement:

12  
13 “There’s no grading you here on standardized tests. There are no auditoriums  
14 with 500 to 1 student to professor ratios, **and there’s no student debt!** Instead  
we bring together bright students for a transformative college experience in the  
epicenter of the technology industry.”

15 38. This statement and statements like it that were repeatedly made to prospective  
16 students (and their parents), imply falsely that ISAs are not student loans. That claim is  
17 demonstrably false. In substance, ISAs are no different from traditional student loans in which  
18 the student pays little to nothing up front and in exchange, the student promises to repay the  
19 tuition after they graduate or withdraw from the program.

20 39. Federal and State regulators have affirmed that ISAs are student loans. The  
21 California DFPI in the Fall of 2021 issued a consent order with one ISA servicer, like Defendant  
22 Vemo, finding that ISAs used to finance postsecondary education are “loans” for purposes of  
23 California’s Student Loan Servicing Act. The CFPB recently made similar findings about ISAs  
24 under Federal law. On September 7, 2021, the CFPB issued a consent order with Better Future  
25 Forward, Inc., a company that (like Vemo) provides students with ISAs to finance post-  
26 secondary education. *In the Matter of Better Future Forward, Inc.*, No. 2021-CFPB-0005,

27  
28 <sup>4</sup> <https://www.ycombinator.com/companies/make-school>.

1 Consent Order at ¶ 1 (Sept. 7, 2021). In no uncertain terms, the CFPB found that “ISAs are  
2 loans and do create debt.” *Id.* ¶ 23.

3 40. Make School’s representations that the ISA program was a “debt free” option that  
4 was materially different than a student loan constitute false advertising, and unlawful, unfair, and  
5 fraudulent business acts or practices under California law.

6 *Make School and Vemo’s Marketing of the ISA Agreements as Superior to Traditional Loans*

7 41. Make School, in conjunction with Vemo, marketed the ISA tuition model as  
8 superior to so-called “traditional colleges,” and in doing so, misled students to believe that  
9 financing the Make School program through ISA agreements would leave them better off  
10 financially and in less debt compared to students who chose to attend a four-year university. As  
11 set forth below, those statements grossly misrepresented (a) the actual total cost of the ISAs  
12 versus conventional loans, (b) the proportion of their income students would pay compared to  
13 other income-based repayment programs available with traditional loans, and (c) the deferment,  
14 forbearance, forgiveness, and enforcement options available for traditional loans versus the ISAs.

15 42. In 2016 and 2017, Make School claimed that students could finance their tuition  
16 by pledging 25% of their future earnings for three years and six months (42 months). For  
17 students who wished to borrow living expenses while they attended school full-time, those  
18 students could “obtain an extension” of their ISA (*i.e.*, take out an additional ISA) to receive a  
19 living stipend of \$1,500 per month. In total, Make School falsely claimed that students could  
20 expect to pay \$90,000 in tuition if they fully financed the program with a ISA.<sup>5</sup>

21  
22  
23  
24  
25  
26 <sup>5</sup><https://web.archive.org/web/20161108192456/https://www.makeschool.com/admissions#tuition> (Nov.  
27 8, 2016); [https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-  
college/admissions](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions) (June 6, 2017).

1  
2  
3 Make School is a pioneer in the Income-Based Repayment (IBR) tuition model for higher  
4 education. Income-Based Repayment Tuition means that students can pay their tuition to the  
5 Product Academy by pledging a percentage of their future earnings. Make School may offer a  
6 student Full, Partial, or Half IBR tuition.

Payment Option	Up-Front Tuition	% of Pre-Tax Salary	Months of IBR
Full IBR	\$0/yr	25%	3 Years + 6 Months
Partial IBR (US)	\$7,500/yr	25%	2 Years + 6 Months
Half IBR	\$15,000/yr	25%	1 Year + 6 Months

10  
11 **Income share agreement table (2017)**

12 Move slider to see ISA range



13  
14  
15 \$0 upfront tuition (paid in quarterly installments over two years)

16 42 months of tuition payback at 25% of gross salary (6 month internship + 3 years of work)

17 \$3,300 average monthly take home salary (after taxes and tuition)

18 \$90,000 expected total tuition paid

19 43. In 2018, Make School began advertising a slightly different but no better ISA  
20 program. Make School advertised on its website in 2018 that students could pay their year one  
21 tuition in full by pledging 20% of their future earnings for 36 months and pay their year two  
22 tuition by pledging 20% of their future earnings for an additional 24 months. For students who  
23 wished to borrow living expenses while they attended school full-time, those students could  
24 “stack” additional ISAs onto their tuition ISAs, which would provide a living stipend of \$1,500  
25 per month in exchange for the student pledging and additional 5-7% of his or her future earned  
26  
27  
28

1 income after graduation.<sup>6</sup>

2 44. In one widely disseminated promotional video created in 2018, Make School’s  
3 founder Jeremy Rossmann falsely stated that tuition for Make School’s program was “70k up  
4 front if you choose that option [i.e., paying up front out of pocket], *or about 100k if you choose*  
5 *the income share option, and that’s for a full bachelors.*”<sup>7</sup>

6 45. These statements are false. Make School and Vemo failed to disclose that four or  
7 more ISAs would need to be signed to fully fund the program for two years—and *each* of those  
8 ISAs had maximum payment obligations or “payment caps” between \$40,500 and \$100,000 on  
9 average. As set forth in the chart below, depending on the year enrolled, tuition alone could cost  
10 students between \$140,500 and \$175,000, and room and board could cost an additional \$81,000  
11 to \$108,000, depending on the students’ future income. Accordingly, the potential liability under  
12 a typical Make School/Vemo ISA package far exceeds any tuition and/or room and board costs  
13 that could conceivably be paid for comparable four-year universities offering undergraduate  
14 degrees (or any graduate program for that matter). The actual cost of financing the Make School  
15 program with ISAs for two years could potentially cost students over a quarter of a million  
16 dollars, which equals about four times the purported market rate for those “training services.” In  
17 many instances, Plaintiffs’ income share obligation exceeds \$3,000 per month and is more than  
18 their monthly rent or mortgage.<sup>8</sup>

19  
20  
21  
22 <sup>6</sup>[https://web.archive.org/web/20180709042552if\\_/https://www.makeschool.com/product-  
college/tuition-and-aid](https://web.archive.org/web/20180709042552if_/https://www.makeschool.com/product-college/tuition-and-aid) (July 6, 2018).

23  
24 <sup>7</sup> [facebook.com/KOMONews/videos/is-this-silicon-valley-colleges-pay-nothing-until-you-get-  
a-job-tuition-plan-the/2254301184845481](https://www.facebook.com/KOMONews/videos/is-this-silicon-valley-colleges-pay-nothing-until-you-get-a-job-tuition-plan-the/2254301184845481) (Posted December 12, 2018).

25 <sup>8</sup> This chart reflects the total potential liability for students financing Make School’s program with four  
26 ISA contracts (a tuition and stipend ISA for year one, and a tuition and ISA stipend for year two). Some  
27 students needed to take out a fifth ISA for living expenses if they were unable to complete the program in  
28 two years, which came with its own payment cap that added on to the other payment caps, resulting in a  
greater potential liability over a longer period of time.

Year first enrolled at Make School	Actual funds credited to student's account for tuition over two-year program	Average funds provided for rent and living expenses over the two-year program	Maximum potential liability under Tuition ISAs (i.e., "payment cap")	Maximum potential liability under living stipend ISAs (i.e., "payment cap")	Total potential liability to students financing program through ISAs
2016	\$50,000	\$27,000	\$140,500	\$81,000	<b>\$221,000</b>
2017	\$60,000	\$36,000	\$160,000	\$108,000	<b>\$268,000</b>
2018	\$70,000	\$31,500	\$175,000	\$94,500	<b>\$269,500</b>

46. Moreover, and to make matters worse, Make School's statements concerning the term of its ISA program (*i.e.*, the number of months students would have to make income share payments) were also false and misleading because they incorrectly imply that a student's income-share obligations under the ISAs would cease within forty-two to sixty months depending on the year signed and whether the student also signed an ISA for living expenses, or when the student hit the payment cap (summarized above), whichever came first.

47. In reality, one tuition ISA was required each year, and one or more living stipend ISAs would be needed each year to cover living expenses while attending school full-time—and *each and every* ISA could be extended up to 36 additional months. The ISAs were paid one after the other in the case of students who first enrolled in 2016 and 2017, or, in the case of students who first enrolled in 2018 (and a small handful of students who enrolled in the winter of 2017-2018), in sets of two (year one ISAs, then year two ISAs). The practical result was that students would remain obligated to share income for a significantly longer period of time than advertised—sometimes for ten years or more—thereby ensuring that Make School and Vemo would receive an income share that was as close as possible to the exorbitant payment caps, outlined above, many of which were not disclosed to students before enrolling in the program.

48. In addition, from 2016 to 2019, Make School on its website and at promotional events stated that Make School graduates would, on average, "start working 2 years earlier than typical computer science undergrads," and that as a result, Make School students could expect to

1 earn \$190,000 (pre-tax) immediately following graduation, while their peers would still be in  
2 college and “paying up to \$80,000 in tuition for their junior and senior years.” An example of  
3 this statement, which appeared on Make School’s website in 2018 and 2019 is reproduced  
4 below.<sup>9</sup> Substantially similar statements were made to Plaintiffs at promotional events prior to  
5 their enrollment.

## 6 7 COMPARING TO TRADITIONAL COLLEGES

8 Our graduates start their careers with an average salary of \$95k/year, on par with graduates  
9 from top-tier programs and far ahead of the national average of around \$66,000 .

10 Our graduates start working 2 years earlier than typical computer science undergrads. While  
11 their peers are paying up to \$80,000 in tuition for their junior and senior years of college, our  
12 typical graduate earns \$190,000 pre-tax.

13  
14 49. These statements (endorsed and promoted by Vemo) concerning the estimated  
15 debt of a “traditional” student versus the projected income of a Make School student are false  
16 and misleading because the statements compare apples to oranges. In other words, the projected  
17 (and inflated) *debt* of a so-called “traditional” student is compared to the projected *income* of a  
18 Make School graduate. In doing so, Make School concealed the true cost of Make School’s two-  
19 year program and potential debt that Make School students would have upon leaving the  
20 program as compared to the debt of a traditional four-year university student.

21 50. In addition, these statements are false and misleading because they inflate the  
22 amount of debt and monthly payment obligation that students attending traditional four-year  
23 universities have on average. The statements do not disclose that federal financial aid,  
24 scholarships, grants, and/or private loans are frequently made available to those students, all of  
25

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26 <sup>9</sup> [https://web.archive.org/web/20190403055150/https://www.makeschool.com/computer-](https://web.archive.org/web/20190403055150/https://www.makeschool.com/computer-science/tuition-and-aid)  
27 [science/tuition-and-aid](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition) (April 3, 2019); *see also*  
28 [https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition)  
[college/admissions#tuition](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition) (June 6, 2017).

1 which have significantly more favorable pay-back terms than Make School and Vemo’s ISAs.

2 51. For example, Federal Loans and a growing number of private loans<sup>10</sup> have  
3 repayment plans in which the students’ monthly payment obligation is calculated as a percentage  
4 of his or her income. The U.S. Department of Education, for example, offers “Pay As You Earn”  
5 and “Revised Pay as You Earn” payment plans under which students’ monthly payment amount  
6 is calculated as 10% of the students’ *discretionary* income—that is, income in excess of 150% of  
7 the HHS Poverty guidelines based on family size. Make School’s ISA program, in contrast,  
8 calculates students’ monthly payment obligation as 25% of the students’ *pre-tax* income,  
9 resulting in a significantly higher monthly payment amount.

10 52. Moreover, unlike traditional student loans, the ISAs do not provide for deferment,  
11 forbearance, or forgiveness if, for example, the student experiences unexpected financial  
12 hardship due to a medical emergency, or a spouse losing a job, or for other reasons. The 25%  
13 income share is not adjusted based on family size or other financial obligations students may  
14 experience. Make School never disclosed these facts, and instead claimed falsely in 2017 that if  
15 students had a “real loan,” a private lender could “call the sheriff and come take all your stuff.”  
16 That statement is also false and misleading because personal property seizures are virtually non-  
17 existent as a remedy for non-payment of a student loan.

18  
19 *Make School’s False Promises Concerning Debt Waivers for Military Veterans*

20 53. In addition, Make School specifically targeted military veterans. Make School  
21 falsely advertised Make School as a soon-to-be Yellow Ribbon School. The Yellow Ribbon  
22 program is a provision in the Post-9/11 GI Bill that allows veterans to attend a private school for  
23 little or no out-of-pocket money. Make School promised military veterans that their student debt  
24 would be waived or dramatically reduced once Make School became a Yellow Ribbon school.

25  
26 <sup>10</sup> Joanna Pearl & Brian Shearer, *Credit by Any Other Name: How Federal Consumer Financial Laws*  
27 *Governs Income Share Agreements*, Student Borrower Protection Center (July 2020), at p. 9 and n.27  
28 (providing examples of traditional private student loan programs offering income-based-repayment options).



1           54.     Plaintiffs are informed and believe that to this day, Make School never could and  
2 never did obtain Yellow Ribbon status.

3  
4 *Make School and Vemo's Failure to Provide Students with Any Meaningful Opportunity to*  
5 *Review their ISA Contracts*

6           55.     Plaintiffs were not provided with an initial ISA contract to review and sign until  
7 after the student had already re-located to the San Francisco area to begin attending classes.

8           56.     Upon signing an initial ISA for year one, Plaintiffs were never told what the  
9 actual terms of subsequent ISAs would be, including the payment cap of those future  
10 agreements. In some instances, students did not know that there would be subsequent ISAs at  
11 the time that they enrolled in Make School's program. It was not until after the student signed an  
12 initial ISA upon enrollment, and after the student had invested significant time and money  
13 participating in the program, they were asked to sign new ISAs on more than one instance.

14           57.     Those agreements were presented without any meaningful opportunity to review  
15 them. In some instances, students (including the Plaintiffs named herein) were asked to sign  
16 ISAs the same day they received them or else they could not complete the program. Moreover,  
17 on occasion the multiple ISAs provided to students were internally inconsistent and led to absurd  
18 results.

19 *Make School's False and Misleading Statements Concerning its Interest in Students' Success*

20           58.     Despite Make School's claims otherwise, the ISA program was not "financial aid"  
21 at all. It was an illegal and exploitative scheme designed to generate start-up funds that was  
22 targeted at low-income students who, through no fault of their own, did not have the up-front  
23 cash to pay for Make School's program.

24           59.     Make School presented its ISA program as innovative and the solution to the  
25 student debt crisis because it "align[ed] [Make School's] incentives with the outcome of [it's]  
26 students – [it was] successful if [the student is] successful."<sup>11</sup>

27 <sup>11</sup> [https://web.archive.org/web/20180709042552if/https://www.makeschool.com/product-](https://web.archive.org/web/20180709042552if/https://www.makeschool.com/product-college/tuition-and-aid)  
28 [college/tuition-and-aid](https://web.archive.org/web/20180709042552if/https://www.makeschool.com/product-college/tuition-and-aid) (July 2018).

1           60. Vemo likewise for years has promoted and continues to promote ISA programs as  
2 “[a] winning formula for colleges” because the program “align[s] institutional success with  
3 student outcomes.”<sup>12</sup>

4           61. For example, in January of 2019, Make School’s co-founder Jeremy Rossmann  
5 promoted Make School’s ISA tuition model on CBSN. He was asked the following question by  
6 the news anchor: “how on earth do[es] [Make School] make money if people don’t get good  
7 jobs?” Mr. Rossmann responded with “well we don’t, that’s the whole point. Students get good  
8 jobs, and therefore we make money. We’ve got students hired by Facebook and Apple, Google,  
9 a bunch of great companies . . . and [] its outcomes like those that pay the bills.”<sup>13</sup>

10           62. These marketing messages suggested (falsely) that Make School would only be  
11 “successful” (*i.e.*, receive money and remain a viable institution) if it properly prepared its  
12 students for rewarding and good paying jobs.

13           63. The truth is, Make School used its ISA pool as a way for Make School to generate  
14 start-up funds from investors and lenders long before students graduated. The actual incentive of  
15 Make School was to have as many students sign as many ISA contracts as possible so that Make  
16 School could (i) package and sell those ISAs to investors in exchange for cash up front, and (ii)  
17 borrow money from lenders backed by the ISAs themselves.

18           64. Make School did not disclose how it had been using the ISAs to receive start-up  
19 funds before students graduated until May 20, 2021, when it told current students participating in  
20 the ISA program that “[t]he ISA program relied heavily on investors purchasing the future  
21 payback of these loans in exchange for loaning Make School the money it needed to operate.”

22           65. Contrary to Make School’s representations otherwise, Make School’s incentives  
23 were not “aligned” with its students. The actual incentive for Make School was to create a large  
24 ISA pool so Make School could sell those ISAs and receive operating cash, which is precisely

25 \_\_\_\_\_  
26 <sup>12</sup> <https://vemoeducation.com/blog/2019/01/13/isa-101-a-brief-primer-on-income-share-agreements/>  
(last visited June 23, 2021).

27 <sup>13</sup> Program could change the way college students pay tuition (posted January 14, 2019) at 1:22-1:45, *available at*  
28 [https://www.youtube.com/watch?v=H7sjk863qLo&ab\\_channel=CBSNews](https://www.youtube.com/watch?v=H7sjk863qLo&ab_channel=CBSNews) (last visited January 24, 2022).

1 what Make School did by inducing students to sign as many as five ISAs to finance the program  
2 using false and deceptive rhetoric.

3  
4 **D. Make School Fails to Live Up to Its Lofty Promises, Causing the Majority of  
Make School Students to Withdraw From the Program**

5 66. Plaintiffs and the members of the putative class enrolled at Make School, and  
6 signed expensive ISAs, based on promises that were made to them concerning the value of the  
7 education they were to receive and the debt they could expect to have after graduation.

8 67. Plaintiffs and the members of the putative class were promised a cutting-edge  
9 curriculum and a “powerful professional network” that would sling-shot them into a job at top  
10 technology companies in Silicon Valley and across the world.

11 68. Plaintiffs and the members of the putative class did not receive what they were  
12 promised. The program curriculum was non-existent or underdeveloped and was essentially a  
13 series of online exercises using free open-source material that students could find themselves  
14 without paying expensive tuition (plus living expenses). Many instructors did not have teaching  
15 credentials or advanced degrees that made them qualified for college-level teaching positions.  
16 And courses were frequently taught on the fly without any set structure. Many of the skills  
17 needed to obtain apprenticeships and eventually jobs in the field were either self-taught, taught  
18 by other students, or obtained at outside “bootcamps” not affiliated with Make School (for an  
19 additional fee).

20 69. To be clear, Plaintiffs are not bringing this action because they did not become  
21 software engineers. Some former students of Make School did go on to become software  
22 engineers and some did not. Plaintiffs are bringing this action because Make School and Vemo  
23 misrepresented what Make School provided and the long-term cost of those services.

24 70. As a result of these deceptive business practices, the majority of students who  
25 enrolled in Make School withdrew because they were not provided with the educational services  
26 promised and/or the program was too expensive and not necessary for them to become gainfully  
27 employed.

1           71. According to Make School’s own data, of the 49 students who entered Make  
2 School in 2017, 41 students (86%) either withdrew from the program or were dismissed.<sup>14</sup>  
3 Similarly, at the time the data was reported, of the 92 students who entered Make School in  
4 2018, 42 students (47.8%) had either withdrawn from the program or were dismissed, and the  
5 other half (44 students) was still enrolled, and several of those students subsequently withdrew or  
6 were dismissed as well.<sup>15</sup>

7           72. Despite the fact that the vast majority of Make School students never completed  
8 Make School’s computer science program, Vemo is and will continue to enforce the income  
9 share agreements against Plaintiffs and other former and current Make School students, unless  
10 declaratory or injunctive relief is awarded by this Court.

11 **E. From its Inception until July 12, 2018, Make School Operated Illegally in the**  
12 **State of California without BPPE Approval**

13           73. In addition to these material misrepresentations, Make School, from its inception  
14 until July 12, 2018, operated without approval by the State of California, in violation of  
15 California law and an order by the State requiring it to cease operations.

16           74. Specifically, Make School is regulated by the California Bureau of Private  
17 Postsecondary Education (“BPPE”). Under the Private Postsecondary Education Act, if a  
18 postsecondary institution is not accredited by the regional accreditation agencies (which Make  
19 School was not), state approval by the BPPE is mandatory to open and operate a private  
20 postsecondary institution in the State of California. *See* Cal. Ed. Code § 94886 (“a person shall  
21 not *open, conduct, or do business* as a private postsecondary educational institution in this state  
22 without obtaining an approval to operate under this chapter.”) California law makes it a crime to  
23 “[k]nowingly operat[e] a private postsecondary institution without an approval to operate.” *See*  
24 Cal. Ed. Code § 94943.

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25 <sup>14</sup> [https://docs.google.com/spreadsheets/d/1p\\_oeHqdVhIHnFU9Qidd-Ak3Ynbuf5l8qqhKpuEG-](https://docs.google.com/spreadsheets/d/1p_oeHqdVhIHnFU9Qidd-Ak3Ynbuf5l8qqhKpuEG-mwww/edit#gid=488358698)  
26 [mwww/edit#gid=488358698](https://docs.google.com/spreadsheets/d/1p_oeHqdVhIHnFU9Qidd-Ak3Ynbuf5l8qqhKpuEG-mwww/edit#gid=488358698), available at [https://www.makeschool.com/computer-science-](https://www.makeschool.com/computer-science-degree/outcomes/data)  
27 [degree/outcomes/data](https://www.makeschool.com/computer-science-degree/outcomes/data) (last visited June 23, 2021).

28 <sup>15</sup> *Id.*

1           75.     Furthermore, under California Education Code § 94917, any “note, instrument, or  
2 other evidence of indebtedness relating to payment for an educational program is not enforceable  
3 by an institution unless, at the time of execution of the note, instrument, or other evidence of  
4 indebtedness, the institution held an approval to operate.”

5           76.     At the time that Make School began operating, and continuing for over three  
6 years, Make School knowingly operated illegally without approval from the BPPE. Make  
7 School enrolled hundreds of students, and induced those students to sign ISA agreements, at a  
8 time when Make School did not have approval to operate in the State.

9           77.     On May 2, 2018, the BPPE fined Make School \$100,000 and ordered it to cease  
10 operating until an approval to operate had been obtained. Make School was also ordered to  
11 provide a refund to all students enrolled at the school prior to receiving an approval to operate  
12 because “the enrollment agreements signed by the student are not enforceable since the school  
13 does not have approval to operate.”<sup>16</sup>

14           78.     Despite the clear requirement to cease all operations, Make School continued to  
15 operate and advertise its educational services and ISA program to the public. Make School never  
16 disclosed the BPPE order to students, and instead induced Plaintiffs and members of the putative  
17 class to sign ISAs, even after the May 2, 2018 order to cease operating was issued.

18           79.     The May 2, 2018 citation was modified on or about August 13, 2018 to reduce the  
19 fine assessed to \$25,000.<sup>17</sup> The BPPE did not modify its order with respect to its order of  
20 abatement requiring Make School to provide a refund to students enrolled at Make School prior  
21 to receiving approval to operate.

22           80.     Make School did not obtain approval to operate a non-accredited institution until  
23 July 12, 2018.

24           81.     Make School did not disclose the BPPE citation to Plaintiffs, and on information  
25 and belief, it did not attempt to refund any students who signed ISAs prior to the school having

26 \_\_\_\_\_  
27 <sup>16</sup> [https://www.bppe.ca.gov/enforcement/actions/1718011\\_make\\_school.pdf](https://www.bppe.ca.gov/enforcement/actions/1718011_make_school.pdf) (Last visited June 23,  
2021).

28 <sup>17</sup> [https://www.bppe.ca.gov/enforcement/actions/appeal\\_makeschool.pdf](https://www.bppe.ca.gov/enforcement/actions/appeal_makeschool.pdf) (Last visited June 23, 2021).

1 approval to operate in the State.

2 82. Plaintiffs are informed and believe and thereon allege that Vemo continued to  
3 send bills and other collection notices to former Make School students attempting to receive  
4 payment on the ISA agreements, notwithstanding the BPPE's orders and Education Code Section  
5 94917.

6  
7 **F. Even After it Obtained BPPE Approval, Make School was Required to, But**  
8 **did Not, Keep that BPPE approval in late 2019, 2020, and 2021, Rendering**  
9 **these ISAs Unenforceable.**

10 83. Following the 2018 BPPE order requiring Make School to shut down and refund  
11 students (which Make School ignored), Make School did eventually obtain BPPE approval to  
12 operate, effective July 13, 2018. However, Make School only held that approval for  
13 approximately one year.

14 84. On May 30, 2019, Make School wrote to the BPPE to inform the BPPE that it  
15 had partnered with Dominican University of California ("Dominican") pursuant to the WSCUC  
16 incubation policies, which allowed non-accredited institutions like Make School to partner with a  
17 WSCUC accredited institution (Dominican) with the stated intent of the unaccredited entity  
18 evolving within the accredited institution to the point of becoming separately accreditable under  
19 WSCUC policies. During the incubation relationship, Make School students could obtain a B.S.  
20 degree through Dominican, notwithstanding the fact that Make School lacked its own  
21 accreditation.

22 85. Dominican at all relevant times had approval to operate from the BPPE by virtue  
23 of its status as a WSCUC-accredited institution (Western Association of Schools and Colleges).  
24 However, WSCUC incubation policies are clear that entering into an incubation relationship with  
25 an accredited institution like Dominican does not relieve the incubated entity (here, Make  
26 School) from maintaining its own separate BPPE approval during that incubation relationship.  
27 WSCUC policies provide that "the unaccredited entity [Make School] must seek and obtain its  
28 *own* authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to  
becoming a separately accredited institution." See WSCUC Incubation Policies, § 2(d)(iv),

1 attached hereto as **Exhibit A**.

2 86. Make School and Dominican integrated these WSCUC requirements into their  
3 Memorandum of Understanding (“MOU”). A redacted copy of Dominican’s MOU with Make  
4 School is attached hereto as **Exhibit B**. The MOU provides that Make School “must seek and  
5 obtain its own authorization from California’s [BPPE] prior to becoming a separately accredited  
6 institution.” Ex. B at ¶ I(N).

7 87. Documents and information obtained since the filing of the original complaint in  
8 this action have revealed that Make School made false assertions to the BPPE in 2019 when it  
9 surrendered its BPPE approval about how students would be charged for the computer science  
10 program. In May of 2019, Jeremy Rossmann wrote to the BPPE and claimed that Make School  
11 did not need to be authorized to operate by the BPPE during its incubation relationship with  
12 Dominican because during that relationship Make School “would not be offering postsecondary  
13 education to the public for an institutional charge as the education offerings *and charges* would  
14 be through Dominican.”

15 88. That statement is false, because Make School continued to charge students for  
16 tuition through ISA agreements in 2019, 2020, and 2021. Those ISA agreements are between the  
17 student and Make School (not Dominican). Plaintiffs are informed and believe, and thereon  
18 allege, that the ISAs were never sold or assigned to Dominican, and Dominican has not collected  
19 on Make School’s ISA agreements.

20 89. Make School’s rescission of its BPPE approval became effective on July 19,  
21 2019. The MOU and WSCUC policies are clear that Make School needed to, but did not,  
22 maintain BPPE approval during the incubation relationship. Under California Education Code  
23 section 94917, any ISAs signed after July 19, 2019 are invalid and unenforceable. Nonetheless,  
24 Vemo continues to send bills and other collection notices to members of the putative class  
25 attempting to receive payment on these post-rescission ISA agreements, notwithstanding the  
26 BPPE’s orders and Education Code Section 94917.

1 **F. After Receiving Notice of Plaintiffs' Claims, Make School Enters into an**  
2 **Assignment for the Benefit of the Creditors**

3 90. On April 14, 2021, several Plaintiffs in this lawsuit sent Make School and Vemo a  
4 claim notice pursuant to the ISAs.

5 91. On May 13, 2021, one day before the 30-day notice period expired, Make School  
6 indicated that it was in the process of engaging counsel and that it was very interested in  
7 resolving the matter pre-litigation. In reliance on those statements, Plaintiffs decided not to file a  
8 complaint at that time.

9 92. Between May 14, 2021 and June 3, 2021, the parties exchanged emails and phone  
10 calls concerning the parameters of a settlement that would involve cancellation or amendment to  
11 Make School's ISA contracts.

12 93. However, on June 4, 2021, Make School backed out of those discussions and  
13 instead claimed that "due to the threatened lawsuit and other factors," Make School would be  
14 entering into an assignment for the benefit of the creditors ("ABC") in which it would be  
15 transferring all of Make School's assets to an assignee. As such, Make School no longer held  
16 any assets and no longer had any authority to cancel or modify any ISAs, including Plaintiffs'.  
17 Make School further informed Plaintiffs' counsel that Make School's computer science program  
18 was being administered by a non-profit, which did not hold any of the ISAs. At that time,  
19 however, Make School's counsel would not disclose who the assignee was, who the new  
20 holder(s) of students' ISA contracts was, what specific Make School entity entered into the ABC  
21 and when, and whether Vemo still serviced the ISA contracts.

22 94. It was not until June 22, 2021 that counsel for the assignee disclosed partial  
23 details about the ABC transaction, including that a new Make School entity, Defendant "Make  
24 School ABC, LLC" was the assignee and owned the ISA contracts through its subsidiary,  
25 Defendant "Make School ISA SPV, LLC."

26 95. Make School ceased operating on July 30, 2021.

27 96. On information and belief, the assignee Make School ABC, LLC intends to  
28 market and sell the ISA contracts to a debt buyer, which in turn will continue attempting to



1 collect payments under the ISAs from Plaintiffs and other students through Defendant Vemo  
2 and/or another third party.

3 97. In addition, Plaintiffs are informed and believe, and thereon allege, that one of  
4 Make School's lenders has a security interest in a portion of Make School's ISAs and will likely  
5 foreclose on those assets (if it has not already), and then continue to collect from former Make  
6 School students.

### 7 CLASS ACTION ALLEGATIONS

8 98. Pursuant to California Code of Civil Procedure § 382, Plaintiffs bring this action  
9 individually and on behalf of similarly situated individuals.

10 99. **Class definition.** Plaintiffs Sam Galizia and Eric Botcher bring an action on  
11 behalf of a Class (hereinafter the "Class), which is composed of the following persons:

12 "The approximately 266 Persons who obtained at least one income share  
13 agreement from Make School during the Settlement Class Period that remained  
14 outstanding as of April 28, 2023, and who do not opt out of the Settlement Class  
15 pursuant to this Agreement. Excluded from the Settlement Class are the judges  
16 to whom the Action is assigned and the members of their staff or immediate  
17 family."

18 100. This action is brought and may properly be maintained as a class action under §  
19 382 because there is a well-defined community of interest in the litigation, and the proposed  
20 class is easily ascertainable based on Defendants' records.

21 101. **Numerosity and Impracticability of Joinder.** The proposed class is numerous  
22 and ascertainable. The proposed class consists of approximately three hundred individuals, and  
23 therefore joinder of all individual class members would be impractical.

24 102. **Community of Interest.** There is a well-defined community of interest because  
25 common questions of law and fact exist as to all members of the class and predominate over any  
26 questions solely affecting individual members of the class. There are common questions of law  
27 and fact common to the Class that predominate over questions affecting only individual  
28 members, including, among other things, the following:

a. Whether Make School's income share agreements signed while the school  
did not have the required approval to operate from the BPPE are unenforceable;

1           b.       Whether Defendants' marketing and promotion of its income share  
2 agreement program violated the California Unfair Competition Law (Cal. Bus. & Prof.  
3 Code § 17200);

4           c.       Whether Defendants' statements in advertising concerning its income  
5 share agreement program violate the California False Advertising Law (Bus. & Prof.  
6 Code § 17500);

7           d.       Whether Defendants' statements concerning income share agreement  
8 forgiveness for military veterans violated the California Unfair Competition Law (Cal.  
9 Bus. & Prof. Code § 17200) and/or the California False Advertising Law (Bus. & Prof.  
10 Code § 17500);

11          e.       Whether Vemo has violated the Rosenthal Act (Cal. Civ. Code § 1788 *et.*  
12 *seq.*) by attempting to collect on the amounts allegedly owed Make School's ISAs that  
13 were signed when the school did not have the required approval to operate from the  
14 BPPE and by sending bills calculated based on average earnings rather than actual  
15 earnings;

16          f.       Whether Vemo's actions in connection with its servicing of Make  
17 School's income share agreements violates the Student Loan Servicing Act (Cal. Civ.  
18 Code § 1788.101);

19          g.       Whether Defendants have been unjustly enriched; and

20          h.       The proper measure and calculation of damages.

21       103.   The questions of law and fact listed above will yield common answers for  
22 Plaintiffs and the Class as to whether Defendants are liable for the alleged legal violations.

23       104.   **Typicality of Claims and Relief Sought.** Plaintiffs' claims are typical of those  
24 of the members of the class. Plaintiffs, like other class members, were subject to the unlawful  
25 practices described herein.

26       105.   **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the  
27 interests of the class and have retained counsel experienced in class action litigation.

1           106. Class treatment is appropriate under California Code of Civil Procedure § 382  
2 because Defendants have acted on grounds that apply generally to the class, so that final  
3 injunctive relief or corresponding declaratory relief is appropriate with respect to the class.

4           107. This action is properly maintainable as a class action under California Code of  
5 Civil Procedure § 382 because questions of law or fact predominate over any questions affecting  
6 individual class members. A class action is superior to other methods in order to ensure a fair and  
7 efficient adjudication of this controversy because, in the context of similar litigation, individual  
8 plaintiffs often lack the financial resources to vigorously prosecute separate lawsuits against  
9 corporate defendants. Class litigation is also superior because it will preclude the need for undue  
10 duplicative litigation resulting in inconsistent judgments pertaining to Defendants' policies and  
11 practices. There will be no difficulties in managing this action.

12   **FIRST CAUSE OF ACTION**  
13   **(Declaratory and Injunctive Relief)**  
14   **(Asserted by Plaintiff Sam Galizia on Behalf of the Class Against All Defendants)**

15           108. Plaintiff Sam Galizia realleges and incorporates by reference all the allegations  
16 set forth in each of the preceding paragraphs of this Complaint.

17           109. Plaintiff Sam Galizia seeks a declaration pursuant to C.C.P. § 1060 that the ISAs  
18 entered into prior to Make School's approval to operate on a non-accredited basis are void and  
19 unenforceable.

20           110. An actual, present, and justiciable controversy now exists between the parties  
21 with respect to the rights of Plaintiff Sam Galizia and Defendants. On the one hand, Plaintiff  
22 contend that any ISA signed by a student prior to Make School receiving approval from the  
23 BPPE to operate is void and unenforceable. Defendants, on the other hand, dispute the above  
24 contentions, as shown by their attempts to collect 25% or more of his pre-tax income each  
25 month, notwithstanding the fact that the school did not have approval to operate in the State at  
26 the time those ISAs were signed.

27           111. A judicial determination of the rights and obligations of the parties is necessary  
28 and appropriate at this time under the circumstances.

1 **SECOND CAUSE OF ACTION**

2 **Declaratory Judgment**

3 **(Asserted by Plaintiffs on Behalf of the Class Against All Defendants)**

4 112. Plaintiffs reallege and incorporate by reference all the allegations set forth  
5 in each of the preceding paragraphs of this Complaint.

6 113. Plaintiffs seek a declaration pursuant to C.C.P. § 1060 that the ISAs  
7 entered into after Make School rescinded its BPPE approval on July 19, 2019, are void  
8 and unenforceable.

9 114. An actual, present, justiciable controversy now exists between the parties  
10 with respect to the rights of Plaintiffs and Defendants. On the one hand, Plaintiffs  
11 contend that any ISA signed by a student after Make School rescinded its BPPE approval  
12 on July 19, 2019 is void and unenforceable. Defendants, on the other hand, dispute the  
13 above contentions, as shown by their attempts to collect Plaintiffs' income each month,  
14 notwithstanding the fact that Make School had no approval to operate in the State at the  
15 time those ISAs were signed.

16 115. A judicial determination of the rights and obligations of Plaintiff and  
17 Defendants is necessary and appropriate at this time.

18 **THIRD CAUSE OF ACTION**

19 **(Asserted by Plaintiffs on Behalf of the Class Against All Defendants)**

20 **Violation of California's Unfair Competition Law ("UCL")**

21 **California Business and Professions Code § 17200, et. seq.**

22 116. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
23 of the preceding paragraphs of this Complaint.

24 117. Plaintiffs and Defendants are "persons" within the meaning of the UCL. Cal. Bus.  
25 & Prof. Code § 17201.

26 118. The UCL defines unfair competition to include any "unlawful, unfair, or  
27 fraudulent business act or practice," as well as any "unfair, deceptive, untrue or misleading  
28 advertising." Cal. Bus. & Prof. Code § 17200.

119. By committing the acts and practices alleged herein, Defendants have engaged in

1 unlawful, unfair, and fraudulent business acts and practices in violation of the UCL.

2       120. **Unlawful Conduct:** As a result of engaging in the conduct alleged in this  
3 Complaint, Defendant Make School has violated the UCL’s proscription against engaging in  
4 unlawful conduct by virtue of its violation of state and federal law. More specifically, Defendant  
5 Make School has violated the UCL’s proscription against engaging in “unlawful” business  
6 practices by virtue of its conduct in violation of the Federal Trade Commission Act (“FTCA”),  
7 which prohibits “unfair or deceptive acts or practices in or affecting commerce.” (15 U.S.C. §  
8 45(a)(1)) and prohibits the dissemination of any false advertisements (15 U.S.C. § 52(a)). In  
9 addition to federal law, Defendant Make School has violated California Civil Code §§ 1710 and  
10 1711, California Education Code §§ 94886 and 94943, and California’s False Advertising Law  
11 (Bus. & Prof. Code § 17500). Plaintiffs reserve the right to allege other violations of law, which  
12 constitute other unlawful acts or practices.

13       121. In addition, Defendant Vemo has violated the UCL’s proscription against  
14 engaging in unlawful conduct by virtue of its violation of state and federal law in connection  
15 with its marketing of its ISA contracts through Make School, and in connection with its collection  
16 efforts under those ISAs. More specifically, Defendant Vemo has violated the UCL’s  
17 proscription against engaging in “unlawful” business practices by virtue of its conduct in  
18 violation of the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive  
19 acts or practices in or affecting commerce.” (15 U.S.C. § 45(a)(1)) and prohibits the  
20 dissemination of any false advertisements (15 U.S.C. § 52(a)), and by virtue of its conduct in  
21 violation of the Fair Debt Collections Practices Act (15 U.S.C. 1692 *et. seq.*) In addition to  
22 federal law, Defendant Vemo has violated California Civil Code §§ 1710 and 1711, California’s  
23 False Advertising Law (Bus. & Prof. Code § 17500), and the Rosenthal Fair Debt Collection  
24 Practices Act, Cal. Civ. Code § 1788 *et. seq.* Plaintiffs reserve the right to allege other violations  
25 of law, which constitute other unlawful acts or practices. Such conduct is ongoing and continues  
26 to this date.

27       122. **Unfair Conduct:** As described above, Defendant Make School has engaged in an  
28

1 “unfair” and deceptive business act or practice by, among other things:

2 a. marketing and promoting ISAs to prospective students in their late teens  
3 and early twenties with no significant experience with financial products without  
4 adequately disclosing the key features of those products;

5 b. marketing and promoting its ISAs not as loans or credit when that  
6 statement is false and misleading and has been expressly rejected by regulators;

7 c. marketing and promoting its ISA tuition model in a way that misled  
8 students to believe that financing Make School with ISA agreements would leave them  
9 financially better off and in less debt compared to students who chose to attend a four-  
10 year university;

11 d. Marketing and promoting an ISA program that failed to adequately  
12 disclose how the ISAs would sequence one after the other and how each ISA could be  
13 extended an additional 36 months, thereby ensuring that the school and/or Vemo would  
14 receive an income share that was as close as possible to exorbitant payment caps that  
15 were 2.5-4 times the original tuition amount or more;

16 e. Falsely claiming that military veterans would be able to attend Make  
17 School at little to no cost once approved as a Yellow Ribbon School by the Department  
18 of Veteran’s Affairs;

19 f. Misrepresenting and concealing to the public, prospective students, and  
20 current students, including Plaintiffs, the true nature of Make School’s financial interest  
21 in students’ success, including by continuing to represent that Make School only got paid  
22 after the students did;

23 g. Introducing new ISA contracts on a take it or leave it basis to students  
24 after those students had already enrolled and invested significant time and money in  
25 Make School’s program; and

26 h. Conducting business without BPPE approval and in violation of BPPE  
27 orders requiring it to cease operations;

1 i. Deliberately concealing the 2018 BPPE order finding that Make School's  
2 ISA agreements signed while the school did not have approval to operate were void and  
3 unenforceable;

4 j. Failing to provide a meaningful curriculum and qualified instructors as  
5 promised.

6 123. As described above, Defendant Vemo has engaged in an "unfair" and deceptive  
7 business act or practice by, among other things:

8 a. marketing and promoting, through Make School, ISAs to prospective  
9 students in their late teens and early twenties with no significant experience with  
10 financial products without adequately disclosing the key features of those products;

11 b. marketing its ISAs as not loans or credit when that statement is false and  
12 misleading and has been expressly rejected by regulators;

13 c. marketing and promoting, through Make School, an ISA tuition model in a  
14 way that misled students to believe that financing Make School with ISA agreements  
15 would leave them financially better off and in less debt compared to students who chose  
16 to attend a four-year university;

17 d. marketing and promoting, through Make School, an ISA program that  
18 failed to adequately disclose how the ISAs would sequence one after the other and how  
19 each ISA could be extended an additional 36 months, thereby ensuring that the school  
20 and/or Vemo would receive an income share that was as close as possible to exorbitant  
21 payment caps that were 2.5-4 times the original tuition amount;

22 e. Falsely claiming that military veterans would be able to attend Make  
23 School at little to no cost once approved as a Yellow Ribbon School by the Department  
24 of Veteran's Affairs; and

25 f. Continuing to collect on income share agreements signed when the school  
26 did not have BPPE approval to operate notwithstanding the fact that those agreements are  
27 void and unenforceable.

1           124.   ***Fraudulent Conduct:*** A business act or practice is “fraudulent” under the UCL if  
2 it is likely to deceive members of the consuming public.

3           125.   Make School and Vemo’s acts and practices alleged above constitute fraudulent  
4 business acts or practices because they have deceived Plaintiffs and are highly likely to deceive  
5 members of the consuming public.

6           126.   Each of the Plaintiffs relied on Make School and Vemo’s fraudulent and  
7 deceptive representations regarding Make School and its ISA tuition model.

8           127.   Plaintiffs would not have entered into ISA agreements without Make School  
9 and/or Vemo’s representations.

10          128.   ***Unfair, deceptive, untrue, or misleading advertising:*** Make School and Vemo’s  
11 advertising of its ISA agreements, and Make Schools’ advertising of its computer science  
12 program constitutes unfair, deceptive, untrue, or misleading advertising under the UCL.

13          129.   Advertising is misleading under the UCL if members of the public are likely to be  
14 deceived.

15          130.   As set forth above, the above-described representations concerning Make  
16 School’s computer science program and ISA tuition model were communicated to Plaintiffs and  
17 other prospective Make School students, and the advertisements are likely to mislead a  
18 reasonable person into believing that a meaningful curriculum and qualified instructors would be  
19 provided to students, and that financing that program with ISAs would leave them financially  
20 better off than their peers who attended traditional four-year universities.

21          131.   This UCL claim is brought against Make School ABC, LLC and Make School  
22 ISA SPV, LLC pursuant to the FTC holder rule and related California law, which preserves  
23 Plaintiffs’ right to assert claims and defenses against the holder of the ISAs even if those  
24 contracts are assigned to a third party.

25          132.   Defendants’ violations of the UCL continue to this day, as Vemo, Make School’s  
26 assignees, and any subsequent loan servicers, will continue collection efforts on the ISA  
27 contracts. Unless restrained and enjoined, Plaintiffs and the Class will continue to receive  
28



1 demands for exorbitant amounts of money under the ISA contracts, the assignee, and/or whoever  
2 the assignee markets and sells the ISA contracts to as part of Make School’s liquidation.

3  
4 **FOURTH CAUSE OF ACTION**  
5 **(Asserted by Plaintiffs on Behalf of the Class Against all Defendants)**  
6 **Violation of California’s False Advertising Law (“FAL”)**  
7 **California Business and Professions Code § 17500, *et. seq.***

8 133. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
9 of the preceding paragraphs of the Complaint.

10 134. California Business and Professions Code § 17500 broadly proscribes “untrue or  
11 misleading statements in advertising” in connection with the performance of services.

12 135. Defendant Make School provides a service to consumers in which consumers sign  
13 up for “educational/training services.”

14 136. In connection with the performance of those services, Defendants Make School  
15 and Vemo intended to and did make untrue and misleading statements in advertising in violation  
16 of the FAL. Make School’s online content and statements concerning the cost of the ISAs, which  
17 was endorsed and promoted by Vemo, violate the FAL because for the reasons described above,  
18 those statements have deceived Plaintiffs and are likely to deceive members of the public.

19 137. Further, Make School’s untrue statements that military veterans would be able to  
20 attend Make School at little to no cost violate the FAL because those statements have deceived  
21 Plaintiffs and are likely to deceive members of the public.

22 138. Plaintiff and other Make School students suffered injury in fact as a result of  
23 Defendant Make School’s actions as set forth herein because each of the Plaintiffs enrolled at  
24 Make School and signed ISA agreements in reliance on Make School’s false and misleading  
25 claims.

26 139. Plaintiffs discovered the falsity of Make School’s advertisements and promotional  
27 statements between 2019 and 2020, once they began to learn from fellow students who had  
28 begun receiving bills from Vemo the true long-term cost of the ISAs was not what had been

1 disclosed to them prior to enrollment.

2 140. Make School and Vemo have profited from their collection efforts under the ISA  
3 contracts and continue to collect on those agreements.

4 141. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs are entitled to  
5 public injunctive relief and equitable relief and restitution.

6 142. This claim is brought against Make School ABC, LLC and Make School ISA  
7 SPV, LLC pursuant to the FTC holder rule and related California law, which preserves Plaintiffs'  
8 right to assert claims and defenses against the holder of the ISAs even if those contracts are  
9 assigned to a third party.

10  
11 **FIFTH CAUSE OF ACTION**  
12 **Violation of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”)**  
13 **(Asserted by Plaintiffs on Behalf of Proposed Class Against Defendant Vemo)**  
14 **Cal. Civil Code § 1788 *et. seq.***

15 143. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
16 of the preceding paragraphs of the Complaint.

17 144. Each of the Plaintiff’s financial obligations allegedly owed under the ISA  
18 contracts at issue in this case is a “debt” and a “consumer debt” as those terms are defined by the  
19 RFDCPA, Cal. Civil Code § 1788.2(d) and (f).

20 145. Defendant Vemo is a “debt collector” as that term is defined by the RFDCPA,  
21 Cal. Civil Code § 1788.2(c).

22 146. Each of the Plaintiffs is a “debtor” as that term is defined by the RFDCPA, Cal.  
23 Civil Code § 1788.2(h).

24 147. For the reasons set forth above, the ISA contracts entered into before Make  
25 School had BPPE approval to operate in the State of California are void and unenforceable. By  
26 collecting and attempting to collect the amounts under these ISA contracts, Vemo violated the  
27 RFDCPA. Vemo’s violations include, but are not limited to, the following: (a) misrepresenting  
28 the character, amount, or legal status of the debt, in violation of 15 U.S.C. § 1692e(2)(A),

1 incorporated into state law by California Civil Code § 1788.17; (b) misrepresenting the  
2 compensation which may be lawfully received by Vemo and/or Make School for the collection  
3 of the debt, in violation of 15 U.S.C. § 1692e(2)(B), incorporated into state law by California  
4 Civil Code § 1788.17; and (c) attempting to collect interest, fees, or other charges from Plaintiffs  
5 that are not expressly authorized by the agreement creating the debt or otherwise permitted by  
6 law, in violation 15 U.S.C. § 1692f(1), incorporated into state law by California Civil Code §  
7 1788.17.

8 148. Vemo also violated the RFDCPA by sending former Make School students billing  
9 statements that reflected “average earnings for a person working full-time” in the student’s field  
10 of study as opposed to actual amounts owed under the ISA agreements.

11 149. Before a student’s payment period began, the student received a notice from  
12 Vemo informing them that the payments under the ISAs will soon begin. The email requests  
13 income documentation from which to calculate the amount owed under the ISA, if any. If the  
14 student does not provide income documentation within 30 days before the first scheduled  
15 payment is due, Vemo issues a bill that purportedly reflects 25% of the pre-tax “average  
16 earnings” for a person working full-time in the student’s field of study.

17 150. That “average” or estimate of what Vemo thinks *might* be owed under the ISAs is  
18 not a statement of the actual current amount due. Yet, the bills received by the student provide no  
19 disclosure that the bill is an estimate and does not actually reflect the actual amount owed.

20 151. By sending purported bills based on “average earnings” to Plaintiffs, Vemo  
21 violated the RFDCPA. Vemo’s violations include, but are not limited to, the following: (a)  
22 misrepresenting the character, amount, or legal status of the debt, in violation of 15 U.S.C. §  
23 1692e(2)(A), incorporated into state law by California Civil Code § 1788.17; (b) misrepresenting  
24 the compensation which may be lawfully received by Vemo and/or Make School for the  
25 collection of the debt, in violation of 15 U.S.C. § 1692e(2)(B), incorporated into state law by  
26 California Civil Code § 1788.17; and (c) attempting to collect interest, fees, or other charges  
27 from Plaintiffs that are not expressly authorized by the agreement creating the debt or otherwise  
28

1 permitted by law, in violation 15 U.S.C. § 1692f(1), incorporated into state law by California  
2 Civil Code § 1788.17.

3 152. Vemo’s acts as described herein were done willfully and knowingly with the  
4 purpose of coercing Plaintiffs to pay the debt, as that term is defined by Cal. Civil  
5 Code § 1788.30(b).

6 153. As a result of Vemo’s violations of the RFDCPA, Plaintiffs and the Class are  
7 entitled to an award of actual damages in an amount to be determined at trial, pursuant to Cal.  
8 Civil Code §§ 1788.17.<sup>18</sup>

9  
10 **SIXTH CAUSE OF ACTION**  
11 **(Asserted by Plaintiffs on Behalf of the Class Against Defendant Vemo)**  
12 **Violation of the Student Loan Servicing Act**  
13 **California Code § 1788.101**

14 154. Plaintiff realleges and incorporates by reference all the allegations set forth in  
15 each of the preceding paragraphs of the Complaint.

16 155. This Court eight for violation of the California Student Loan Servicing Act (the  
17 “SLSA”) is brought in the alternative to Plaintiffs’ Count five for violation of the Rosenthal Fair  
18 Debt Collection Practices Act, to the extent that Vemo is not determined to be a “debt collector”  
19 within the meaning of subdivision (c) of California Civil Code section 1788.2.

20 156. Plaintiffs are “borrowers” within the meaning of subsection (a) of the SLSA  
21 because they are each a person who received a student loan.

22 157. Plaintiffs’ ISAs are “student loans” within the meaning of subsection (q) of the  
23 SLSA because they are loans made solely to finance a postsecondary education (*i.e.*, Make  
24 School’s computer science program), and they do not fall within any of the exceptions to the  
25 definition of a student loan set forth in subsections (q)(2).

26 158. Defendant Vemo is a “student loan servicer” within the meaning of subsection (s)  
27 of the SLSA because it is “engaged in the business of servicing student loans in this state.”

28 <sup>18</sup> 15 U.S.C. § 1692k(a)(1).

1           159. SLSA section 1788.101(b)(1) broadly prohibits student loan servicers from  
2 engaging in abusive acts or practices when servicing a student loan.

3           160. Among other things, a student loan servicer violates the SLSA by  
4 “[d]irectly or indirectly employing a scheme, device, or artifice to defraud or mislead a  
5 borrower.” Cal. Civ. Code § 1788.101(b)(1).

6           161. Defendant Vemo worked in coordination with Make School to employ a scheme  
7 to defraud Plaintiffs and the Class in violation of the SLSA.

8           162. Among other things, Plaintiffs are informed and believe and thereon allege that  
9 Vemo drafted the ISAs (including its numerous unconscionable terms) and marketed those ISAs  
10 to Make School as a way for both entities (Vemo and its partner school) to make money off  
11 students. Vemo partnered with Make School and specifically sought to market and promote its  
12 ISA agreements through Make School. Plaintiffs are informed and believe, and thereon allege,  
13 that Vemo is familiar with, and approved, its partner school’s advertising and enrollment  
14 practices Accordingly, Vemo was well aware of, and actively participated in and facilitated a  
15 scheme to defraud and/or mislead borrowers.

16           163. In addition, a student loan servicer violates the SLSA by “misrepresent[ing] or  
17 omit[ting] material information in connection with the servicing of a student loan, including, but  
18 not limited to, the amount, nature, or terms of a fee or payment due or claimed to be due on a  
19 student loan, the terms and conditions of the student loan agreement, or the borrower’s  
20 obligations under the student loan.” Cal. Civil Code § 1788.101(b)(2).

21           164. For the reasons set forth above, the ISAs signed by Plaintiffs and the Class are  
22 void and unenforceable because Make School do not have approval to operate in the State of  
23 California from the BPPE, as required by the California Education Code.

24           165. By collecting and attempting to collect the amounts under Make School’s ISA  
25 contracts, Vemo knowingly violated the SLSA by misrepresenting and omitting material  
26 information in connection with the servicing of a student loan, namely, that the instruments upon  
27 which it was trying to collect are not enforceable under the California Education Code.

1           166. As a result of Vemo's violations of the SLISA, Plaintiffs and others have signed  
2 ISAs and have made payments on those ISAs.

3           167. As a result of Vemo's violations of the SLISA, Plaintiffs and others have signed  
4 ISAs and have made payments on those ISAs.

5  
6  
7                           **SEVENTH CAUSE OF ACTION**  
8                           **Unjust Enrichment**  
9                           **(Asserted by Plaintiffs on Behalf of the Class Against all Defendants)**

10           168. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
11 of the preceding paragraphs of the Complaint.

12           169. By their wrongful acts and omissions, Defendants were unjustly enriched at the  
13 expense of and to the detriment of Plaintiffs and the Class. Defendants were unjustly enriched as  
14 a result of the compensation they have received from the marketing and sale of the unlawful and  
15 unfair ISAs to Plaintiffs.

16           170. Plaintiffs seek restitution from Defendants and seek an order of this Court  
17 disgorging all profits, benefits, and other compensation obtained by Defendants from their  
18 wrongful conduct.

19           171. Plaintiffs and the Class have no adequate remedy at law.

20                           **PRAYER FOR RELIEF**

21           WHEREFORE, Plaintiffs pray for relief and judgment against Defendants as follows:

22           **For the First Cause of Action (Declaratory and Injunctive Relief):**

23           a. A declaration by the Court that any income share agreements entered into prior to  
24 Make School having approval to operate in the State of California are unlawful and  
25 unenforceable;

26           b. A preliminary and permanent injunction restraining and enjoining Defendants  
27 from enforcing any income share agreement signed prior to Make School having obtained  
28 approval to operate in the State of California, or, if Defendants are not the current owner of the

1 ISAs, enjoin the current owner from collecting on any ISA signed prior to Make School having  
2 obtained approval to operate in the State of California;

3 c. For restitution and disgorgement of all monies wrongfully collected pursuant to  
4 unenforceable ISAs entered into prior to Make School having obtained approval to operate in  
5 the State of California;

6 d. For costs of suit;

7 e. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

8 f. For such other and further relief as the Court deems just and proper.  
9

10 **For the Second Cause of Action (Declaratory and Injunctive Relief):**

11 a. A declaration by the Court that any income share agreements entered into after  
12 Make School rescinded its approval to operate in the State of California are unlawful and  
13 unenforceable;

14 b. A preliminary and permanent injunction restraining and enjoining Defendants  
15 from enforcing any income share agreement signed after Make School rescinded its approval to  
16 operate in the State of California, or, if Defendants are not the current owner of the ISAs, enjoin  
17 the current owner from collecting on any ISA signed after Make School rescinded its approval to  
18 operate in the State of California;

19 c. For restitution and disgorgement of all monies wrongfully collected pursuant to  
20 unenforceable ISAs entered into after Make School rescinded its approval to operate in the State  
21 of California;

22 d. For costs of suit;

23 e. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

24 f. For such other and further relief as the Court deems just and proper.  
25

26 **For the Third Cause of Action (Cal. Bus & Prof. Code § 17200):**

27 a. For an order declaring that the business acts or practices complained of herein are  
28

1 unlawful and violate Cal. Bus & Prof. Code § 17200.

2 b. For an order requiring Defendants to cancel all ISA agreements of the Class and  
3 refund those students for all payments he or she has made, or, if Defendants are not the current  
4 owner of those ISAs, order the owner to cancel or refund students for all ISA payments made.

5 c. For an order otherwise making full restitution of all monies wrongfully obtained  
6 from Defendants' violations of the UCL, as alleged in this Complaint;

7 d. For prejudgment interest;

8 e. For costs and reasonable attorney fees incurred by counsel for Plaintiffs, including  
9 in accordance with California Code of Civil Procedure § 1021.5; and

10 f. For such other and further relief as the Court may deem just and proper under the  
11 circumstances.

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13 **For the Fourth Cause of Action (Cal. Bus & Prof. Code § 17500):**

14 a. A declaration that the practices complained of herein are unlawful and violate  
15 Cal. Bus. & Prof. Code § 17500;

16 b. Awarding Plaintiffs their damages in an amount to be determined at trial,  
17 including compensatory damages, consequential damages, punitive damages, and any other  
18 damages provided under relevant laws;

19 c. An order awarding Plaintiffs attorneys' fees and costs;

20 d. An order awarding Plaintiffs pre-judgment and post-judgment interest, as allowed  
21 by law; and

22 e. Such further relief as may be appropriate.

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24 **For the Fifth Cause of Action (Cal. Civ. Code § 1788.17):**

25 a. With respect to Plaintiffs, For actual damages and a recovery of \$1,000 civil  
26 penalty pursuant to civil code § 1788.30(a)-(b).

27 b. With respect to Plaintiffs, for actual damages and a recovery of \$1,000 civil  
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1 penalty pursuant to 15 U.S.C. § 1692k(a)(1) which has been incorporated into state law by  
2 California Civil Code § 1788.17.

3 c. With respect to the Class, for actual damages, and statutory damages equal to  
4 \$500,000 or 1 percent of the net worth of the Defendants pursuant to 15 U.S.C. § 1692(a)(2)(B),  
5 which has been incorporated into state law by California Civil Code § 1788.17.

6 d. Prejudgment interest;

7 e. Reasonable attorney fees and costs; and

8 f. Such other and further relief as the Court may deem just and proper under the  
9 circumstances.

10 **For the Sixth Cause of Action (Cal. Civ. Code § 1788.101)**

11 a. An injunction restraining and enjoining Vemo from violating any provision of the  
12 SLSA connection with the servicing of Make School's ISAs;

13 b. For restitution and disgorgement of all monies wrongfully collected under Make  
14 School's ISA(s);

15 c. Punitive damages;

16 d. Awarding Plaintiff costs and reasonable attorney fees in accordance with Cal.  
17 Civ. Code § 1788.103(b)(4); and

18 e. For such other and further relief as the Court deems just and proper.

19 **For the Seventh Cause of Action (Unjust Enrichment):**

20 a. Disgorgement of, restitution of, and/or imposing a constructive trust upon, the ill-  
21 gotten gains derived by Defendants from their unjust enrichment; and

22 b. For such other and further relief as may be appropriate.

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**DEMAND FOR JURY TRIAL**

Based on the foregoing, Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: April \_\_, 2023

**THE SEQUOIA LAW FIRM**

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*Attorneys for Plaintiffs and the putative class.*

# **EXHIBIT A**

## Incubation Policy

### Review, Monitoring and Approval of Proposed “Incubation” Relationships with WSCUC Accredited Institutions Policy

(Excerpted from the Substantive Change Manual: see sub-section “ORGANIZATIONAL CHANGE: Accreditation of an Unaccredited Entity through Affiliation with an Accredited Institution”)

This section applies to proposals in which an entity that is not WSCUC accredited seeks to create a formal relationship with a WSCUC accredited institution with the stated intent of the unaccredited entity evolving within the accredited institution to the point of becoming separately accreditable under WSCUC policies. The targeted time to achieve the goal of separate accreditation may be uncertain or addressed at an undefined future date. To be considered for Commission approval, the entity seeking to affiliate with the accredited institution must represent a coherent educational program or organizational configuration that can be envisioned as potentially becoming a stand-alone institution in compliance with WSCUC’s Separately Accreditable Institutions Policy.

For the purposes of this section, the proposed affiliation will be referred to as an “incubation” relationship. The concept of incubation applies to scenarios such as<sup>1</sup>:

- A new entity with robust resources that would likely achieve WSCUC accreditation on its own once it has graduated from a program but wishes to move more quickly into the category of an operational higher education institution
- An innovative or experimental educational entity that desires a period of time as an actual part of the higher education sector to demonstrate whether it is viable on its own

In view of the fact that the implications of such a relationship extend beyond those of a substantive change for a new program, this section anticipates the multiple areas to be reviewed, over an extended period of time, in preparation for a sequence of actions by the full Commission.

#### SCOPE OF REVIEW

Substantive change proposals are expected to address the following:

1. Submitting Entity: The institution that holds WSCUC accreditation will prepare and submit the proposal to enter into an incubation relationship, with the full and informed collaboration of the unaccredited entity. This is essential in view of the fact that WSCUC has jurisdiction only over the

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<sup>1</sup> In such cases where a segment or operational unit of an existing accredited institution intends to create a separate identity and/or organizational structure apart from the parent institution, such as an online division or an adult-serving institution, the emerging entity must apply for its own accreditation following the process outlined in the How to Become Accredited Manual.

accredited institution. This institution, through its continuous supervision of the unaccredited entity as an organic component of its own organization, is expected to ensure its compliance with WSCUC requirements at each stage of the process.

2. **Planning:** Planning documents, including a signed MOU, should address the full range of the envisioned relationship, including:
  - a. **Purposes:** The proposal must express how the relationship harmonizes with and furthers the mission of each entity. To this end, it should specify what each party seeks to accomplish by the collaborative agreement in terms of the intended outcomes – financial (such as return to investors for a for-profit institution), academic, and organizational. These intended outcomes must comply at each stage with WSCUC Standards for institutional accreditation.
  - b. **Governance and Control:** The application must include a precise statement of the roles of each entity in both the immediate and the eventual governance structures, with specific attention to defining the controlling interests and ensuring compliance with WSCUC criteria for independent governing boards. It should be clear that the board of the accredited entity exercises sufficient authority and autonomy over the resulting institution to ensure its compliance with WSCUC Standards, with particular attention to oversight of curriculum, resource allocation, and institutional identity. The entity being incubated should have its own governance structure ready to become operational at the time it seeks to achieve separate accreditation. [See [\*Governing Board Policy\*](#).]
  - c. **Academic Services:** The proposal must include a thorough delineation of shared or specified academic responsibilities, including ensuring that the accredited entity:
    - i. Is responsible for transcripts and records, financial aid, admissions and registration processes and the criteria by which these decisions will be made, and is the entity into which students register.
    - ii. Approves student handbooks, policies, and complaint processes, and determines whether any documents apply differentially to each entity.
    - iii. Determines faculty policies, workloads, roles and responsibilities, terms of employment and awards of tenure or similar designations.Such delineations must be sufficiently comprehensive to cover all aspects of the incubated unit.
  - d. **Terms of Separation:** The proposal must address at what point, and by what criteria, the “incubated” entity will be regarded as ready to seek Eligibility and separate accreditation, including a timeline for the anticipated length of the incubation and the eventual separation. Since the governing bodies of each entity will make these decisions, both entities’ governing boards must formally approve this aspect of the proposal. The following elements must be addressed:
    - i. **Financial Agreements:** Specify how tuition revenues and debt obligations will be addressed by each entity; how faculty and staff salaries will be transitioned at the time of separation; and how shared assets, including intellectual properties, will be distributed.
    - ii. **Enrollment and Teach-outs:** Specify how students’ enrollment status will be protected during a transition away from the joint entity. Describe the conditions under which the new entity will enroll its own students and issue diplomas and transcripts in its own name without reference to the name of the parent entity. If any programs offered under the auspices of the joint entity will be discontinued, describe the teach-out agreements that will be implemented at the time of the closure of the program.
    - iii. **Assets and Resources:** Describe in detail the assets, resources, and liabilities that will

be brought to the accredited entity by the agreement and how values will be assigned and assets distributed to each entity upon the separation.

- iv. *State Authorization*: If the institution is located in California, stipulate that the unaccredited entity must seek and obtain its own authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to becoming a separately accredited institution.
  - v. *Title IV Program Participation*: Stipulate that the unaccredited entity must seek and obtain its own federal OPEID number and Program Participation Agreement (PPA) for Title IV purposes prior to recognition as an accredited institution, unless the institution elects not to participate in Title IV. The newly accredited entity must be prepared at that time to manage Title IV obligations or to delegate them to a qualified contractor.
3. Legal Review: All memoranda of understanding and other founding documents will be subject to legal review as determined by WSCUC staff to ensure that the resulting organization complies fully with WSCUC policies and criteria in such areas as governance, accountability, and quality control. The costs for such review will be invoiced to the applicant institution in addition to other specified fees for the level of review required. Both parties must also specify in writing how they will address any conflicts that may entail legal counsel in terms of the mode and venue for conflict resolution.
4. Protocol for Review: A WSCUC accredited institution proposing to enter into a partnership with an unaccredited entity for the purpose of incubating the unaccredited entity will be subject to a review by the WSCUC staff, the Substantive Change Committee, and the Structural Change Committee of the WSCUC Commission. To begin consideration, WSCUC staff will examine the proposal and supporting documentation to determine the appropriate review procedure to be followed. A recommendation for Commission action will be made only when both the staff and the Substantive Change Committee have found that the proposed change sufficiently meets the WSCUC standards to potentially be considered for approval. A site visit by a Substantive Change Committee panel will likely be required as part of the review. This recommendation is referred to the Commission's Structural Change Committee for review and action and subsequently referred to the full Commission for final approval. The arrangement will be evaluated at the time of the next comprehensive review or within six years after implementation, whichever comes first.

Officers from the accredited institution should consult with their WSCUC staff liaison before submitting a proposal under this section.

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*Revised by the Commission February 2015*  
*Revised, June 2018*

# **EXHIBIT B**

**Memorandum of Understanding Between  
Dominican University of California & Make School, Inc.**

WHEREAS, Dominican University of California (“Dominican”), a California non-profit public benefit corporation, four-year postsecondary institution accredited by the WASC Senior College and University Commission (WSCUC) that offers undergraduate and graduate level degrees at its primary campus in San Rafael, California, wishes to increase the digital literacy of its students and faculty and to add a computer science minor to its approved curriculum;

WHEREAS, Make School, Inc. (“MKS”) a Delaware for-profit corporation and two-year post-secondary program that uses a *project/product-focused pedagogy* focusing on teaching coding and computing skills for technology product development, whose curriculum consists of courses in computer science theory, web development, mobile apps, and data science, wishes to collaborate with Dominican to add general education courses such as those offered by Dominican to its curriculum to enable it to award bachelor degrees and to otherwise develop and enhance its educational activities with a goal of securing WSCUC accreditation;

WHEREAS, WSCUC’s *Policy for Review, Monitoring and Approval of Proposed “Incubation” Relationships with WSCUC Accredited Institutions* (“Incubation Policy”) allows for the creation of an incubation relationship where the accredited entity oversees the development of the unaccredited entity with the express goal of assisting the unaccredited entity in achieving separate WSCUC accreditation; and

WHEREAS, the Parties to this Agreement wish to establish such a relationship under WSCUC’s Incubation Policy;

THEREFORE, the Parties to this Agreement do hereby agree as follows:

**I. Overview and Purpose of Relationship**

**A. Creation of Incubation Relationship**

(1) **Establishment of MKS-Dominican.** With the purpose of furthering the mission of each of the Parties, consistent with Dominican’s purposes as a California nonprofit public benefit corporation, the Parties agree to an incubation relationship consistent with the requirements of WSCUC’s Incubation Policy that shall result in the establishment of new school of Dominican, hereafter “MKS-Dominican,” that shall remain in operation during the term of this Agreement and during any subsequent renewals thereto, the purpose of which shall be to both enable Dominican to enhance its capabilities in technology-related areas and provide the opportunity for MKS to transition to a WSCUC-accredited institution.

(2) **Location of MKS-Dominican.** The Parties further agree that, as set forth in detail below, MKS-Dominican will be co-located at the MKS San Francisco campus (the “San Francisco Location”), which will become an instructional site for Dominican during the term of this Agreement subject to Dominican’s control and oversight. The Parties agrees that the San Francisco Location is desirable for its proximity to technology hubs, highly qualified instructional personnel and student employment and internship opportunities.

(3) **Definition of MKS-Dominican.** MKS-Dominican shall be a separate school of Dominican which shall offer courses leading to an academic degree taught by MKS-Dominican



**Memorandum of Understanding Between  
Dominican University of California & Make School, Inc.**

faculty at the San Francisco Location. In addition, students enrolled at Dominican's San Rafael campus located at 50 Acacia Avenue in San Rafael, California (the "San Rafael Location") shall be eligible to register for courses taught by MKS-Dominican faculty offered through the San Rafael Location, including courses offered for credit at the San Rafael Location that are offered in furtherance of a computer science minor. MKS-Dominican shall also serve the purpose of offering faculty development to Dominican faculty at the San Rafael Location with respect to the incorporation of digital literacy into Dominican's curriculum, as needed and determined by the parties.

**B. Alignment of Incubation Relationship with Mission**

The Parties agree that the incubation relationship established pursuant to this Agreement is intended to further the mission of each party in the following ways:

**1. Dominican's Mission**

The incubation relationship is intended to further the mission of Dominican, insofar as MKS-Dominican will provide:

- Dominican with the ability to add digital literacy and digital skills to its current curriculum to ensure students' work readiness and marketability in all majors.
- The opportunity for Dominican to develop new certificates, badges and a minor in Computer Science that would better prepare its students for career and graduate programs;
- Faculty development to prepare Dominican's faculty to incorporate digital literacy/skills in their classes;
- An investment by MKS in shared IT to allow Dominican to properly manage admissions, registration, and related administration of MKS-Dominican in San Francisco as well as to improve such services in San Rafael.
- An additional means of offering integrated learning consistent with Dominican's Dominican Experience, including digital portfolios, mentoring, community engagement and signature work.

**2. MKS's Mission**

The incubation relationship is intended to further the mission of MKS, insofar as MKS-Dominican will:

- Enable MKS to develop the appropriate programs, personnel, policies and procedures such that it will be eligible to transition MKS-Dominican to an independent institution with WSCUC-accreditation;

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- Enable MKS to ensure that its graduates acquire the benefits of a quality general education in conjunction with obtaining their accredited bachelors' degree in computer science.

**C. Relationship Between Dominican & MKS; MKS Program Start Date**

The Parties agree that they shall enter into an incubation relationship, pursuant to this Agreement, during which period Dominican will retain oversight and control over MKS-Dominican's programs and activities as more fully described herein. The effective date of this Agreement shall be the date when this Agreement has been signed by both parties ("Effective Date").

The Parties agree that, subject to the approval of WSCUC, Dominican's Board of Trustees and Faculty, and any other legally required approvals, MKS-Dominican shall begin offering programs in the Spring 2019 semester, or in the first semester thereafter upon receipt of all required approvals. The parties further agree to target November 2018 for WSCUC approval of MKS-Dominican. Prior to the launch of MKS-Dominican, the parties shall use best efforts to offer general education courses to students enrolled at the San Francisco Location in order to facilitate the receipt of degrees.

**D. Goal of Partnership**

The Parties agree that the following are explicit goals of the incubation relationship:

- A transfer of knowledge between the parties so that Dominican adds digital competencies and computer science courses to its curriculum by means of faculty development and sharing of course content and MKS adds general education courses to its curriculum by means of faculty development and sharing of course content
- An investment in Dominican's technology that will allow it to both provide the required database dependent services for MKS-Dominican at the San Francisco location and MKS-Dominican courses on Dominican's campus.
- MKS will have established governance, administrative and academic systems, policies and practices consistent with WSCUC Standards so that it will be fully qualified to be recognized as a free-standing WSCUC-accredited institution at the conclusion of the incubation period; the duration of said incubation period to be determined by the Parties and WSCUC in accordance with its Incubation Policy then in effect.

**E. Governance and Control of MKS-Dominican**

The Parties to this Agreement do hereby agree that Dominican, as the accredited institution, shall retain control over MKS-Dominican according to WSCUC guidelines and all applicable laws and regulations, and as detailed in the provisions below. It is the intention of the Parties to enable MKS to become a stand-alone, WSCUC-accredited institution after the incubation period. As such, the Parties agree that the relationship created pursuant to this Agreement is intended over a three-year period to develop MKS's competencies to govern and operate as a WSCUC-accredited institution, with MKS-Dominican gaining increasing autonomy during this time period, as determined to be appropriate by Dominican in its sole authority.

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Dominican University of California & Make School, Inc.**

**i. Administrative Oversight of MKS-Dominican**

(1) The Parties agree to create the new position of Dean of MKS-Dominican (“Dean”), who shall have qualifications, duties and responsibilities at least comparable to those of Dominican Deans in similar positions.

(2) The Dean shall be subject to the control of Dominican and shall have direct reports as specified herein. The sole authority for hiring, evaluating and retaining the Dean shall reside with Dominican. MKS shall have input into the search process, including engagement in the interview process and be consulted respecting hiring, evaluating and retaining the Dean. The Dean shall report to the Vice President for Academic Affairs at Dominican and shall serve on Dean’s Council. The Dean shall work closely with the co-CEOs of MKS, who shall provide Dominican with input and recommendations on the performance of the Dean. The Dean shall have his or her primary work location at MKS-Dominican in San Francisco.

(3) The Parties shall jointly develop the job description for the Dean. At a minimum, the Dean shall hold a terminal degree and shall have the requisite experience necessary to enable her/him to oversee MKS-Dominican in a manner that ensures compliance with WSCUC’s standard and Dominican’s policies and procedures.

(4) A Director of Academic Compliance, whose duties shall be similar to the current Director of Operations position at Dominican, will be hired by MKS to assist and shall report to the Dean in operating MKS-Dominican. The Parties shall jointly develop the job description for the Director of Academic Compliance.

(5) As more fully provided herein MKS will bear the cost of said Dean and the Director of Academic Compliance during the term of this Agreement. These positions shall be on MKS’s payroll and benefits programs and workers’ compensation insurance unless otherwise required by WSCUC. If not, MKS shall reimburse Dominican for the gross salary, benefits, and overhead for these positions on a calendar month basis, said payments to commence within 30 days of the end of the first month in which each employee was hired.

**ii. Board Oversight of MKS-Dominican**

(1) MKS-Dominican will be operated as an academic unit of Dominican consistent with Dominican’s governance policies as implemented by its Board of Trustees.

(2) The Board of Trustees of Dominican shall oversee the operation of MKS-Dominican, its academic operations, degrees, academic integrity, and compliance, in the same manner at the Board exercises oversight and control over such functions at Dominican as a whole.

(3) MKS’s Board of Directors will continue to manage the business and affairs of MKS.

(4) To satisfy WSCUC’s standards for a free-standing accredited institution, the Board of Directors of MKS will develop a structure and governance processes to enable it to meet WSCUC’s standards upon separation.

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**iii. Faculty Oversight of MKS-Dominican**

(1) During the term of this Agreement, the faculty of Dominican shall approve MKS-Dominican's curriculum, course offerings, content, evaluation, grading, learning outcomes and shall retain all other customary oversight of the academic operations of MKS-Dominican, consistent with Dominican's shared governance policies and procedures. The Parties agree that, to ensure MKS qualifies as a stand-alone institution at the conclusion of the incubation period, Dominican shall provide MKS with recommendations for improvement or modifications to academic programs offered at MKS-Dominican within 45 days of the end of each term occurring within this Agreement.

(2) Prior to offering any courses under this Agreement, the Parties agree to follow the assessment of an external evaluator for the current courses being offered by MKS that are intended to be offered for an accredited degree to ensure that the quality and learning outcomes of MKS-Dominican courses are consistent with the standards for a WSCUC-accredited institution. The external evaluator shall also evaluate the credentials and teaching effectiveness of MKS's current faculty. The Parties agree that the evaluation of the external evaluator shall govern which courses are ready to be offered under this Agreement, subject to the ultimate approval of the faculty of Dominican. MKS shall develop and provide a curriculum that meets Dominican's academic expectations for a bachelor's degree, consistent with the recommendations of the external evaluator, to be presented to Dominican's faculty for its approval as appropriate.

**F. Academic Services**

It is the intent of the Parties that Dominican shall retain ultimate authority and control over the Academic Services of MKS-Dominican set forth below. It is further the intent of the parties that the Dean of MKS-Dominican shall retain administrative oversight of the services delineated below, subject to the authority of Dominican's Vice President for Enrollment Management or Vice President for Academic Affairs, as appropriate. The Dean and her/his designee shall be provided access to Dominican's database and to other necessary information to allow sufficient oversight and review of the Academic Services set forth below. As an educational services provider, MKS officials shall have access to said records upon request and consistent with the requirements of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA").

**i. Admissions Criteria and Decisions**

(1) Except as provided below, Dominican's admissions standards and procedures in effect at the time of the admissions cycle shall apply to all applicants for admission to MKS-Dominican.

(2) Subject to the ultimate approval of Dominican, the Parties may establish admissions standards and procedures for MKS-Dominican that are in addition to those used by Dominican currently, as long as the standards are more selective than those used by Dominican.

(3) Dominican students may transfer from Dominican to MKS-Dominican through the MKS-Dominican admissions process.

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(4) MKS students may not transfer from MKS to MKS-Dominican without having been admitted through the MKS-Dominican admissions process. For the avoidance of doubt, the Parties explicitly agree that students who are currently enrolled in MKS at the time that MKS-Dominican begins offering courses will need to apply to MKS-Dominican and be admitted before they will be eligible to attend MKS-Dominican.

**ii. Tuition, Financial Aid Criteria and Decisions**

(1) **Income Share Agreement (ISA).** The Parties agree that MKS shall continue to offer an ISA option for students enrolling in the MKS-Dominican Computer Science degree programs at the San Francisco Location. Enrolled MKS-Dominican students at the San Francisco Location who wish to enter an ISA shall enter into said agreement with MKS directly, and MKS will be responsible for managing those agreements serviced through a third party. MKS shall notify Dominican of any such agreement allowing Dominican to appropriately credit the student's financial ledger. Student payments through the ISA option will be remitted to, and retained by, MKS.

(2) **Cash Payments.** The Parties agree that MKS-Dominican Computer Science students at the San Francisco Location who wish to pay using a cash option will make such payments directly to MKS. MKS shall notify Dominican of any such payments allowing Dominican to appropriately credit the student's financial ledger. Student cash payments will be remitted to, and retained by, MKS.

(3) **State and Federal Student Aid.** The Parties agree that if MKS-Dominican students secure federal or state financial aid pursuant to Dominican's participation in such programs, student will apply through Dominican's student aid office, and funds disbursed via these programs will be remitted directly to Dominican. If eligible students at the San Francisco Location have an unfunded tuition gap after application of governmental aid, they may secure financing through an ISA directly with MKS, subject to the process outlined in Section (1) or through cash payments as outlined in Section (2), consistent with the requirements of Title IV and the regulations pertaining to the total cost of attendance.

(4) Regardless of the source of tuition payments, or to which party payments are made, the parties agree that each shall remit to the other the appropriate funds due in accordance with the Semester Program Agreement then in effect as set forth in Section I(I) below.

(5) **Setting Tuition & Fees.** The Parties agree that Dominican shall set the tuition and fees for MKS-Dominican during the term of this Agreement, having consulted MKS no later than 90 days before the start of the term.

(6) **Eligibility of MKS-Dominican Students for Dominican Aid.** MKS-Dominican students enrolled at the San Francisco Location shall not be eligible for Dominican scholarships.

(7) **Eligibility of MKS-Dominican Students for Federal and State Aid** MKS-Dominican programs will be Title-IV eligible consistent with the eligibility of other Dominican programs; students enrolled in MKS-Dominican at either location will have access to federal and state financial assistance in a manner comparable to that of other Dominican students.

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(8) **Compliance with Title IV.** MKS shall ensure that it does not cause any violations of Title IV or its implementing regulations, including Section 487(a)(20) of the Higher Education Act (HEA), which prohibits Dominican from providing incentive compensation to any persons or entities for their success in securing student enrollments or the awarding of Title IV Higher Education Act program funds. MKS expressly recognizes that this prohibition applies to employees and agents of MKS in the same manner as it applies to employees of Dominican with regard to MKS-Dominican applicants and students at both locations.

**iii. Awarding and Recording Academic Credit and Credentials**

(1) Dominican shall retain sole authority for awarding and recording academic credit, issuing transcripts, award of academic credentials and retaining academic records consistent with its existing obligations under federal and state law and WSCUC's standards.

(2) MKS shall provide Dominican with any information necessary to satisfy Dominican's obligations.

**iv. Evaluating and Awarding Transfer Credit for Prior Course Work and Experiential Learning**

(1) Dominican shall retain sole authority for evaluating prior course work and experiential learning, including course work previously offered by MKS. Dominican may rely on the assessment of the external evaluation when rendering its determination. In anticipation of the Spring 2019 launch date of MKS-Dominican, Dominican shall develop a framework for evaluating prior course work and experiential learning by no later than August 1, 2018.

(2) Dominican shall retain sole authority for awarding academic credit for prior course work and experiential learning, including prior MKS course credit awarded by MKS prior to the commencement of MKS-Dominican.

**v. Reviewing and Approving Course Content and Curriculum**

(1) As set forth above in Section II.E.(iii), the faculty of Dominican shall approve MKS-Dominican's curriculum, course offerings, content, evaluation, grading, and shall retain all other customary oversight of the academic operations of MKS-Dominican, consistent with Dominican's current shared governance policies and procedures.

(2) MKS may propose changes to course content and curriculum in the degree granting program through Dominican's usual shared governance process, to ensure that the courses at the San Francisco location of MKS-Dominican remain current and in keeping with the needs of industry.

**vi. Offering of Courses**

(1) At least 30 days before the start of each term at either location (San Francisco or San Rafael), the Parties shall meet and confer to determine the appropriate number and type of courses to be offered based on enrollment and the academic needs of MKS-Dominican's students. This agreement shall be embodied in a Semester Program Agreement attached hereto.

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**vii. Registration**

- (1) Dominican's current registration process shall be used for all MKS-Dominican students.
- (2) Dominican shall retain responsibility for registering and tracking data pertaining to MKS-Dominican enrollment for the purposes of submission to IPEDS.
- (3) MKS shall provide Dominican with any information necessary to satisfy Dominican's obligations.

**viii. Instructional Facilities**

- (1) MKS shall ensure adequate instructional facilities at its San Francisco Location for offering MKS-Dominican courses including classroom, advising, library and office space that is sufficient for this purpose; technology and internet service; further, MKS shall ensure that its facilities comply with federal, state and local requirements including OSHA, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.
- (2) Dominican shall ensure adequate instructional facilities at its San Rafael Location for offering MKS-Dominican courses including classroom, advising, library and office space that is sufficient for this purpose; technology and internet service; further Dominican shall ensure that its facilities comply with federal, state and local requirements including OSHA, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act.
- (3) Each party shall bear the cost of operating its respective instructional facility, unless otherwise specified explicitly in this Agreement.

**ix. Faculty**

- (1) The sole authority for hiring, evaluating and retaining faculty who teach in Dominican, expressly including MKS-Dominican, shall reside with Dominican except that each Party shall retain its current faculty on its current payroll and benefits programs and workers' compensation insurance. For avoidance of doubt, when Dominican assigns faculty members to teach general education courses at the San Francisco Location, those faculty members shall be on Dominican's payroll, benefits programs and workers' compensation insurance.
- (2) MKS shall have input on the search process, be included in the interview process and be consulted for a recommendation on hiring, evaluating and retaining faculty selected by Dominican who teach solely at MKS-Dominican's San Francisco Location.
- (3) Faculty members in MKS-Dominican shall report to the Dean of MKS-Dominican.
- (4) For the avoidance of doubt, it is expressly stated that all MKS-Dominican faculty are appointed to non-tenure-track positions except for those Dominican faculty who have already been appointed to tenure-track positions at Dominican by way of employment with non-MKS programs.

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(5) Dominican hereby represents that the collective bargaining agreement between Dominican and SEIU, Local 1021 does not apply to the MKS-Dominican San Francisco Location; however, all terms and conditions established therein, including the rate of compensation per course, shall apply to any courses taught by bargaining unit members at MKS-Dominican's San Rafael Location.

**x. Assessment of Student Learning**

(1) The faculty who teach in MKS-Dominican shall retain the authority to assess student learning in the courses of MKS-Dominican, consistent with the policies and procedures of Dominican.

(2) The faculty of MKS-Dominican shall assess student learning in a manner and frequency to be determined to be adequate by Dominican.

**xi. Student Handbooks, Policies and Complaint Processes at MKS-Dominican**

(1) Students at the MKS-Dominican San Francisco Location will be subject to Dominican's Student Handbook, policies and processes, modified by Dominican in its sole authority, as necessary for that location.

(2) Dominican shall retain the ultimate authority regarding student policies and process at MKS-Dominican, including policies pertaining to academic integrity.

(3) MKS shall employ adequate staff at the San Francisco Location for ensuring compliance with policies set forth in Dominican's Student Handbook (or comparable policies approved by Dominican for the San Francisco Location). These staff shall report to the Dean of MKS-Dominican who shall have the authority to hire, evaluate and retain these employees. These employees shall be on MKS's payroll and benefits plans and workers' compensation insurance.

(4) Students who have complaints about MKS-Dominican shall be directed to file a complaint pursuant to Dominican's stated procedures, which may be modified to suit the San Francisco Location upon approval of Dominican.

**G. Student Support Services**

It is the intent of the Parties that Dominican shall retain ultimate authority and control over the Student Support Services of MKS-Dominican set forth below. It is further the intent of the parties that the Dean of MKS-Dominican shall retain administrative oversight of the services delineated below, subject to the authority of Dominican. The Dean of MKS-Dominican and her/his designee shall be provided access to Dominican's database and to other necessary information to allow sufficient oversight and review of the Student Support Services set forth below. MKS officials shall have access to said records upon request and consistent with the requirements of the FERPA.



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**i. Academic Advising**

(1) Students enrolled in MKS-Dominican shall be eligible for academic advising as a service offered by designated MKS-Dominican Faculty.

(2) The nature and frequency of academic advising at the San Francisco Location of MKS-Dominican shall be consistent with that offered by Dominican at its San Rafael Location.

**ii. Residential Life**

(1) Students enrolled in MKS-Dominican at its San Francisco Location shall be eligible to reside in the residence halls operated by MKS.

(2) Students enrolled in MKS-Dominican at its San Rafael Location (for the computer science minor) shall be eligible to live in the residence halls offered by Dominican, subject to eligibility and procedures then in effect.

**iii. Student Life**

(1) The Dean of MKS-Dominican shall retain the ultimate authority over MKS-Dominican students at the San Francisco Location with respect to student orientations and trainings, campus conduct, code of conduct procedures, clubs and organizations, and student privileges.

(2) MKS shall hire and retain adequate staff to ensure sufficient administration of student life at MKS-Dominican at the San Francisco Location. MKS agrees to certify that any of its employees, independent contractors or agents who will be performing services for the benefit of MKS-Dominican (at either location), will have successfully completed a background check in accordance with Dominican's Background Check Policy then in effect. MKS further agrees to check the references and job history of any of its employees, independent contractors or agents who will be performing services for the benefit of MKS-Dominican (at either location). MKS agrees to comply with the federal Fair Credit Reporting Act and any applicable state laws in obtaining any references and background checks required under this contract. MKS further agrees that it will not assign any employees, independent contractors or agents to MKS-Dominican (at either location) who have not successfully completed a job history check, reference check and background check as required by this Agreement. MKS further agrees that it will immediately remove any of its employees, independent contractors or agents who are performing services for the benefit of MKS-Dominican who have not successfully completed a job history check, reference check and background check as required by this Agreement. Upon such removal, MKS shall notify Dominican of the action but, in the interest of privacy, need not specify the underlying conduct that gave rise to the removal.

(3) In order to oversee student life at the MKS-Dominican San Francisco Location, the parties shall designate an adequately trained MKS employee to serve in the following role(s), subject to the control of Dominican:

a. A deputy Title IX Coordinator.

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- b. A deputy Section 504 Coordinator in order to administer disability accommodations and grievances
- c. A Clery administrator for the San Francisco Location and any related Clery-qualifying locations.

In the event there is a vacancy in any of the above positions, MKS shall reimburse Dominican for any services rendered to the San Francisco Location at the hourly rate then in effect for the Dominican employee providing such services.

(1) Dominican shall ensure that any legally required trainings for MKS-Dominican students, faculty and staff have been provided. To the extent that Dominican incurs additional user fees for these trainings, MKS shall reimburse these fees with 30 days of receiving an invoice.

(2) MKS-Dominican students at the San Francisco Location shall be eligible to use the facilities at Dominican's San Rafael Location, including Conlan Recreation Center.

(3) During the term of this Agreement, Dominican's Dean of Students shall use his or her best efforts to provide education and training for MKS-Dominican staff in order to allow these individuals to assume an increasing level of responsibility during the incubation period.

**H. Auxiliary Services**

The Parties agree that Dominican shall retain the ultimate authority for any auxiliary services, such as food service, financial aid processing, career and academic advising, pre-applicant screening, data gathering and analysis, and other functions not directly related to the awarding of academic credit. The Parties further agree that, to the extent that such auxiliary services are offered at the MKS-Dominican's San Francisco Location, MKS may have operational responsibility for these services as set forth below.

**i. Food Service**

(1) Unless otherwise agreed, MKS shall not offer food service at the MKS-Dominican San Francisco Location.

(2) If said food service is offered and requires a meal plan, MKS shall confer with Dominican regarding the fees for said meal plan and the administration of the account.

**ii. Financial Aid Processing**

(1) The Parties agree that all student financial aid shall be processed by Dominican, as set forth in section I.F.(ii) above, subject to the requirements of Title IV and implementing regulations, the California Student Aid Commission and WSCUC.

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**iii. Career Advising**

(1) Students enrolled in MKS-Dominican shall be eligible for career advising as a service offered by designated MKS-Dominican Faculty.

(2) The nature and frequency of career advising shall be consistent with that offered by Dominican at its San Rafael campus.

**iv. Recruiting & Marketing to Students**

(1) MKS shall be responsible for developing a Recruiting Plan for MKS-Dominican, subject to the oversight and approval of Dominican.

(2) This Recruiting Plan shall be established no later than May 31, 2018 in anticipation of a Spring 2019 launch date.

(3) MKS staff shall implement the Recruiting Plan, subject to Dominican's oversight and control.

(4) Neither party shall convey (explicitly or implicitly) that MKS is an independently accredited entity until WSCUC has explicitly granted such status through an official Commission action. Following the submission of the incubation materials on May 18, 2018, either party may state that MKS has applied for incubation status pursuant to WSCUC's Incubation Policy.

**v. Student and Exchange Visitor Program**

(1) Subject to approval by the federal government, a Dominican official shall serve as the Designated School Official for the Student and Exchange Visitor Program for any eligible MKS-Dominican students who are enrolled (or their dependents) pursuant to an F or M visa classification through or who are classified as a non-immigrant exchange visitor in the J visa classification.

**vi. Data Collection, Reporting, Retention, Protection, and Ownership**

(1) Dominican shall be responsible for data collection and reporting consistent with its obligations under federal and state law.

(2) MKS shall be responsible for providing Dominican with any MKS-Dominican data in its possession, custody or control at Dominican's request.

(3) Any data resulting from or related to MKS-Dominican shall be the sole property of Dominican.

(4) Both parties shall use commercially reasonable efforts to protect data resulting from or related to MKS-Dominican and shall further use commercially reasonable efforts to ensure privacy and security of data being maintained or transmitted and to prevent breaches of the same.

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**vii. Technology Services**

Attached as Exhibit A is a proposal for the Technology implementation known to the Parties as of the Effective Date (“**Technology Plan**”). As a result, both parties understand and agree that the Technology Plan will likely need to be updated and refined/or after the Effective Date. Any changes to the Technology Plan will require the written approval of both Parties. Any changes to the Technology Plan will be consistent with the following principles:

(1) Dominican shall be responsible for obtaining all licenses and consents necessary to use any third-party technology, software or hardware required by Dominican in order to provide MKS-Dominican including, without limitation, any licenses or consents required to be held by MKS as a result of MKS-Dominican.

(2) MKS shall reimburse actual and documented costs put towards technological improvements to hardware and systems upgrades necessary for the implementation of MKS-Dominican for both academics and operations (“Dominican Technology Improvements”). The initial cap on reimbursable costs is \$150,000. Both parties agree that all Dominican Technology Improvements implemented under the Technology Plan shall be necessary improvements for the incubation partnership.

(3) In circumstances where MKS resources are necessary to provide the Dominican Technology Improvements in excess of that set forth in Exhibit A, Dominican will provide MKS with a written estimate of the costs and obtain written consent prior to undertaking any such Dominican Technology Improvements. Dominican may, at its discretion, request payment in advance for any Dominican Technology Improvements.

(4) Upon installation, title to all Dominican Technology Improvements at the San Rafael Location shall transfer to Dominican.

**I. Financial Terms**

(1) Each Party shall remain responsible for its own operations, fees and expenses, unless explicitly set forth in this Agreement. Except as explicitly set forth in this Agreement, neither Party shall be authorized to incur expenses on behalf of the other without express written permission in advance.

(2) **Yearly Determination of Cost per Course.** No later than July 15th of each fiscal year, Dominican shall deliver to MKS:

a. Dominican’s faculty rate per unit negotiated during the preceding collective bargaining negotiations (“Dominican Negotiated Faculty Rate per Unit”).

b. A Blended Benefits Rate to be calculated as a weighted average of the percentage of faculty on Dominican payroll teaching MKS-Dominican courses at the San Francisco Location receiving part-time or full-time benefits (“MKS-Dominican San Francisco Blended Benefits Rate”).

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c. If requested by MKS, supporting documentation to justify the delivered Dominican Negotiated Faculty Rate per Unit and/or MKS-Dominican San Francisco Blended Benefits Rate.

No later than July 15th of each fiscal year, MKS shall deliver to Dominican:

a. The weighted average of instructor salaries teaching MKS-Dominican courses at the San Rafael Location (“MKS-Dominican San Rafael Average Instructor Salary”).

b. The benefits rate for instructors teaching MKS-Dominican courses at the San Rafael Location (“MKS-Dominican San Rafael Instructor Benefits Rate”).

c. If requested by Dominican, supporting documentation to justify the delivered MKS-Dominican San Rafael Average Instructor Salary and/or MKS-Dominican San Rafael Instructor Benefits Rate.

The Cost per Course for courses taught at MKS-Dominican at the San Francisco Location shall be determined by adding the Dominican Negotiated Faculty Rate per Unit and the product of multiplying the Dominican Negotiated Faculty Rate per Unit by the MKS-Dominican San Francisco Blended Benefits Rate. The resulting rate shall be multiplied the number of credits offered to determine the Cost per Course for MKS-Dominican courses taught at the San Francisco Location.

The Cost per Course for courses taught at MKS-Dominican at the San Rafael Location shall be determined by the MKS-Dominican San Rafael Average Instructor Salary per class and the percentage of time each Instructor spends towards instruction. The MKS-Dominican San Rafael Average Instructor Salary will be an average of the Make School instructor salaries who teach courses at the San Rafael campus. This Average Instructor Salary per class and the product of the MKS-Dominican San Rafael Average Instructor Salary and the MKS-Dominican San Rafael Instructor Benefits Rate will be added together. The resulting rate shall be the Cost per Class for MKS-Dominican courses taught at the San Rafael Location.

No later than July 30th of each year, the Parties shall enter in a 12-month binding Service Agreement incorporating the calculated Costs per Course.

(1) **Use of Semester Program Agreements.** Whereas the Parties cannot currently anticipate the number of courses to be offered through MKS-Dominican in each term and whereas this number may fluctuate depending on the needs of the students, the Parties agree that during the course of this Agreement the exact number of courses to be offered at the San Francisco Location and the number of courses to be offered at the San Rafael Location and the cost-sharing associated therewith shall be negotiated between the Parties no later than:

- a. May 1 for the Summer Term;
- b. July 1 for the Fall Term; and
- c. November 30th for the Spring Term.

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Said negotiations are to be reflected in addenda to this Agreement, hereinafter "Semester Program Agreements," the terms of which shall include:

- Number of courses and sections to be offered at the San Francisco Location;
- Number of courses and sections to be offered at the San Rafael Location;
- Appointment and assignment of faculty;
- Costs borne by each Party.

Other than the operational costs agreed to by this Agreement, no financial obligations pertaining to the Semester Program Agreements shall be imposed on either Party other than those arising from the number of courses taught and the applicable reimbursements computed with the applicable Cost per Course; Billing Terms for the Semester Program Agreements will be 30-day net terms and invoiced within 30 days of the end of each semester.

The Parties agree that each shall use its best efforts to deliver their respective MKS-Dominican services and functions in a manner that is financially equitable to both Parties and that the Semester Program Agreements shall be used to correct any financial inequities resulting from the prior term.

In the event any course that is not a 4-unit course is offered in a semester, the Semester Program Agreement shall incorporate an adjusted Cost per Course for any such course, pro-rated by the number of units. For example, if the Cost per Course in the applicable Year Long Service Agreement is \$10,000 and a 3-unit course is offered, the Cost per Course for the 3-unit [course/class] will be \$7,500.

In the event of a discrepancy or conflict between this Agreement or a Semester Program Agreement, this Agreement shall control.

**(1) Investments In Exchange for Administrative Costs Incurred  
Through May 31, 2018**

DUC will be offered the option to invest **Redacted** in MKS' current Series A Extension Financing. Upon MKS' receipt of executed financing documents and investment funds, DUC will receive **Redacted** of Series A Preferred stock with the same rights and at the same share price offered to all investors in this round of financing. For the avoidance of doubt, Dominican's Board of Trustees, by and through an authorized committee of the Board has reviewed this investment and has determined that the proposed transaction is a reasonable and prudent investment of Dominican's resources and Dominican is receiving fair value or market value for its investment.

**(2) Additional Administrative Costs**

Subject to the approval MKS' Board of Directors (the "Board"), DUC will be granted an option to purchase **Redacted** shares of the MKS' Common Stock (the "Option") at **Redacted** per share. Provided that no options shall vest after DUC ceases to provide services to MKS, the Option will vest and become exercisable at the rate of 1/3 of the total number of Option shares on June 1, 2019, 1/3 of the total number of Option shares on June 1, 2020, and 1/3 of the total number of Option shares on June 1, 2021. There is no guarantee that the Internal Revenue Service will agree with this value. The Option will be subject to the terms and conditions set forth in MKS' 2012 Stock Plan and the MKS' standard

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form of stock option agreement. DUC may exercise this option for up to 10 years after the final vesting date. For the avoidance of doubt, Dominican's Board of Trustees, by and through an authorized committee of the Board has reviewed this investment and has determined that the proposed transaction is a reasonable and prudent investment of Dominican's resources and Dominican is receiving fair value or market value for its investment.

As consideration for the Option, DUC agrees to reduce administrative service invoices by 40%. MKS agrees to make the following payments representing 60% of the invoiceable total to Dominican for administrative services, said payments to be invoiced at the end of the semester with 30 day net terms of the in the amount of:

1. Summer 2018: Redacted
2. Fall 2018: Redacted
3. Spring 2019: Redacted
4. Summer 2019: Redacted
5. Fall 2019: Redacted
6. Spring 2020: Redacted
7. Summer 2020: Redacted
8. Fall 2020: Redacted
9. Spring 2021: Redacted
10. Summer 2021: Redacted

In the event MKS does not grant the Option to DUC, MKS agrees to make the following payments to Dominican for administrative services representing 100% of the invoiceable total, said payments to be invoiced at the end of the semester with 30 day net terms.

**J. Compliance Obligations**

(1) Each party shall be responsible for complying with any applicable laws, regulations or compliance obligations.

(2) Each party shall be responsible for its own taxes as independent entities.

(3) Each party shall be responsible for obtaining the appropriate licenses, approvals, registrations, certifications or other approvals necessary to operate.

(4) Best efforts shall be made to share inform appropriate information as soon as practicable to ensure that all compliance obligations are met. Information shall be shared in a manner that respects the privacy of the individuals and on a need to know basis only, consistent with state and federal law and regulatory guidance.

(5) The Parties will keep all usual and proper records related to their respective performance under this Agreement, as required in accordance with generally accepted accounting principles for a minimum of three years from the end of the fiscal year unless a longer period is required under any applicable law or regulation.

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(6) In the event that Dominican determines that additional personnel time is needed to effectuate the terms of this Agreement, it shall provide MKS with at least sixty days' notice to hire an MKS staff or reimburse Dominican for additional staff time beginning on the sixty-first day.

**K.** (7) Each Party shall be responsible for responding to, curing and holding the other Party harmless for any data breaches occurring at its location, on its equipment, systems or resulting from the actions of its employees on its payroll. Each Party shall carry cyber-liability insurance as noted below. **Intellectual Property**

(1) Any rights in intellectual property created by MKS-Dominican students pertaining to coding, software or related inventions are owned by students unless agreed to in advance in writing between the student and the party.

(2) Any rights in intellectual property created by MKS-Dominican faculty on MKS's payroll are owned by MKS, except when such intellectual property is a contribution to a student project, in which case MKS's policies and agreements shall apply.

(3) Any rights in intellectual property created by Dominican faculty on Dominican's payroll who teach in MKS-Dominican are governed by existing Dominican policies.

(4) MKS shall grant Dominican a royalty-free, non-exclusive license to all documents or media owned by MKS related to the successful creation, delivery and implementation of the courses in the Computer Science minor and courses in the MKS-Dominican San Rafael Location, including but not limited to materials, instructional techniques, technical information, protocols, process information, learning objectives, strategies, curriculum, course syllabi, course descriptions, program descriptions, course materials, educational delivery methodologies, and academic support methodologies for the development and delivery of the MKS-Dominican programs. This paragraph shall survive the termination of this Agreement.

**L. Communication, Use of Name, Mark and Logo**

(1) The parties will develop a mutually agreed upon marketing plan for MKS-Dominican and all promotional activities related thereto, to be embodied in Exhibit B to this Agreement. The marketing plan shall address the use of name, logo, insignia, trademarks, service marks or trade names. The parties will communicate regularly to update the marketing plan and to coordinate all other ongoing marketing efforts. All promotional and marketing materials will adhere to the marketing plan.

(2) Neither Party shall make any such public announcement unless the contents of such public announcement are consistent with the approved marketing plan, except as may be required by applicable law or accreditation requirements, in which case the disclosing party shall allow the other party reasonable time in the circumstances to comment thereon in advance of such disclosure.

(3) Each party agrees to adhere to the other party's logo and branding guidelines.



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(4) Subject to the provisions of this Agreement, nothing in this Agreement will be construed to grant either party a license to use the other party's name, logo, insignia, trademarks, service marks or trade names for any other purposes, unless otherwise agreed to in writing by the other party.

(5) Promptly upon obtaining notice of any of the following events, each Party shall notify the other Party in writing, subject to all laws, rules, regulations and policies, should it become aware of any matter or circumstance concerning any of its faculty or professional staff which could involve negative publicity, illegal conduct, public safety or health concerns or other similar matters which could reasonably be expected to negatively affect the students, faculty, professional staff or visitors of the other Party.

**M. Term & Renewal of Agreement**

This Agreement is through June 30, 2022 shall be automatically extended for additional three-year periods from and after the expiration of the first and each succeeding three-year period, unless: one year or more prior to expiration of any three-year term either party gives written notice to the other party that it has elected not to extend the term of this Agreement. Notwithstanding the foregoing, each Semester Program Agreement issued hereunder may define its own term which may extend beyond the Term of this Agreement in which case the terms and conditions of this Agreement will survive and continue through the expiration date of each respective Program Agreement.

**N. State Authorization by the BPPE**

If required to do so, MKS must seek and obtain its own authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to becoming a separately accredited institution.

**O. Employees Responsible for Implementation of Agreement**

The Parties agree that each of them shall develop procedures and identifies the locus of responsibility for negotiating and monitoring this Agreement and the Semester Program Agreements.

The Parties agree that they shall mutually establish procedures for periodically evaluating the efficacy and quality of services and the outcomes of the contractual relationship established by this Agreement.

**P. Teach Out Procedures Upon Termination of Relationship**

In the event that this Agreement is terminated and a teach out plan is required, Dominican, as the accredited entity, shall take all reasonable steps to ensure the teach-out of any students then enrolled at the time of the termination of this Agreement. During the period of the teach-out, MKS shall grant Dominican a royalty-free, non-exclusive license to all documents or media owned by MKS related to the successful creation, delivery and implementation of academic programs, know-how, data and other information, including but not limited to materials, instructional techniques, technical information, protocols, process information, learning objectives, strategies, curriculum, course syllabi, course descriptions, program descriptions, course materials, educational delivery methodologies, academic support methodologies, enrollment and financial projections for the development, delivery

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and marketing of the MKS-Dominican programs. The Parties shall meet and confer to develop a mutually agreeable cost-sharing in the event of teach-out.

Dominican may, but is under no obligation to, offer employment to MKS-Dominican faculty or staff member upon conclusion of their employment with MKS-Dominican, unless an independent contractual requirement is present.

**Q. Exclusivity**

While this Agreement is in effect, MKS will not enter into any incubation relationship with any other entity, nor shall it seek regional accreditation from any other entity than WSCUC.

From the Effective Date of this Agreement until at least sixty days following WSCUC's approval of the incubation application, MKS shall refrain from entering into any agreement with any other post-secondary institution in the United States where such agreement has the purpose or effect of allowing the post-secondary institution to develop (or offer for the first time) a minor in a comparable program or discipline.

**III. Additional Contractual Terms**

**A. Termination of Relationship**

Following expiration or termination of this Agreement, both parties agree to use all reasonable efforts to cease services, discontinue usage of use each other's trademarks, names, and logos, and from taking any action that might cause third parties to infer that the business relationship in this Agreement continues to exist. Promptly following the expiration or termination of this Agreement, the Parties will inform each other in writing of any incomplete work remaining, outstanding deliverables, or outstanding costs or liabilities as of such date. Except as otherwise provided, the Parties agree to work together in good faith to promptly finalize such matters within thirty (30) days of expiration/termination; provided, however, that if a party requires additional time, the parties will exercise good faith to agree on a reasonable extension of time. Notwithstanding anything herein to the contrary, the parties' obligations hereunder shall survive the expiration or termination of this Agreement to the extent (and only to the extent) required to allow then-matriculated MKS-Dominican students to complete their courses within the time period in which such courses were anticipated by the Parties for completion.

**i. Without Cause**

1. Either Party may terminate this Agreement or any Schedule attached hereto for any reason with one-year prior written notice to the other Party.

2. Termination of an individual Semester Program Agreement pursuant to this Section shall not affect the termination of this Agreement.

**ii. For Cause Due to Breach**

A party may terminate this Agreement or any or all Exhibits and have recourse to any other right or remedy under the Agreement or under law and/or equity against the other party for one or more of the following events:

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- A material breach of any provision of the Agreement where such breach remains uncured for thirty (30) days following receipt of written notice;
- Applicable licenses, certificates, permits, authorizations, or other legal credentials are revoked;
- A voluntary proceeding in bankruptcy;
- Dissolution or liquidation; or
- Any assignment for the benefit of creditors.

Any party subject to any of the foregoing events shall provide the other party with immediate notice in writing of any of the aforesaid events.

**iii. Termination For Reasons of Compliance**

If this Agreement is in conflict with regulatory changes, both Parties agree to seek an alternative remedy or, if one is not found, either Party may terminate this Agreement with six months prior written notice.

**iv. Termination Due to WSCUC Rejection**

If this Incubation Relationship is not approved by WSCUC within one year of this Agreement, either Party may terminate this Agreement with six months prior written notice.

**B. Insurance**

All insurance policies in force at the date hereof with respect to each Party: (i) insure against such risks, and are in such amounts, as are reasonable, considering the insured Party's properties, businesses and operations; and (ii) are in full force and effect and all premiums due thereon have been paid.

**Specific Obligation**

- (i) Each Party shall maintain, during the Term, and for a period of two (2) years after the expiration or termination of this Agreement, insurance coverage as follows:
  - a) Commercial general liability at least in the amount not less than Five Million Dollars (\$1,000,000.00) per occurrence.
  - b) Auto Liability - \$5 million occurrence/combined single limit, for "any autos" including owned, leased, non-owned, and hired vehicles
  - c) Employee Dishonesty/Crime - \$1 million per claim. Include theft of property, monies and securities of client, its employees, students, faculty, visitors and guests.
  - d) Workers' Compensation – statutory benefits, \$1 million employer's liability, and \$1 million occupational disease. Applicable in state where work is performed.

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- e) Sexual Misconduct/Abuse Liability - \$5 million occurrence. If included in CGL must be specifically stated on certificate of insurance.
- f) Cyberliability. - \$3 million occurrence.
- g) Educator's Legal Liability – equal to the amount carried by Dominican.
- h) Employment Practices Liability Insurance - \$5 million.
- i) Directors & Officers Insurance. \$5 million.

MKS's insurance shall include Dominican, trustees, officers and payrolled Dominican employees as additional insureds within thirty (30) days after the Effective Date. Each Party's insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the Term.

- (i) Each Party shall furnish a certificate of insurance evidencing such coverage to the other within thirty (30) days after the Effective Date. Thereafter, a Party shall provide thirty (30) days advance written notice to the other Party of any cancellation or material adverse change to such insurance.
- (ii) MKS's insurance shall be primary coverage and any insurance Dominican may purchase shall be excess and non-contributory. The minimum amounts of insurance coverage required herein shall not be construed to impose any limitation on MKS's indemnification obligations under this Agreement.
- (iii) Each Party shall at all times comply in all material respects with all statutory workers' compensation and employers' liability requirements covering its employees on its payroll with respect to activities performed under this Agreement.

**C. Indemnity**

MKS hereby agrees to indemnify Dominican and its trustees, officers, employees and agents and the heirs, successors and assigns of each of the foregoing (each a "Dominican Indemnified Party") against and agrees to hold each of them harmless from any and all claims, damages, losses, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) ("Damages") incurred or suffered by any Dominican Indemnified Party arising out of any negligence, gross negligence and gross misconduct by MKS, its directors, officers, employees (on its payroll) and agents and the, successors and assigns of each.

Dominican hereby agrees to indemnify MKS and its directors, officers, employees (on MKS's payroll) and agents and the, successors and assigns of each of the foregoing (each a "MKS Indemnified Party") against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any MKS Indemnified Party arising out of any negligence, gross negligence and gross misconduct by Dominican, its directors, officers, employees (on its payroll) and agents and the, successors and assigns of each.

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**D. Representations and Warranties of MKS**

MKS represents and warrants to Dominican as of the date of this Agreement as follows:

**1. Authority**

MKS has the necessary corporate power and authority to own, operate, lease and otherwise to hold and operate its assets and properties and to carry on its business as now being conducted, to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by MKS and the consummation by MKS of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of MKS are necessary for MKS to authorize this Agreement or for MKS to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by MKS and constitutes a legal, valid and binding obligation of MKS, enforceable in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by the application of general equitable principles.

**2. Organization and Qualification**

MKS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. MKS is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failures which would not reasonably be likely to have a material adverse effect on MKS-Dominican.

**3. Organizational Documents**

MKS has delivered to Dominican correct and complete copies of the certificate of incorporation and bylaws of MKS (as amended through the date of this Agreement). MKS is not in default under or in violation of any provision of its certificate of incorporation or bylaws.

**4. No Conflict; Required Filings and Consents**

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of MKS, (ii) conflict with or violate any Law applicable to MKS or by which any of its properties or assets is bound or affected result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any liens, security interests, equitable interests, rights of first refusal, pledges, agreements, claims, charges, encumbrances or restrictions of any kind (collectively, "Encumbrances") on any of the properties or assets of MKS pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which MKS or any of its properties or assets is bound or affected, including without limitation, any MKS material contract, except, in the case of clauses (ii) and (iii) above, for any such conflicts, violations, breaches, defaults, alterations or other occurrences that (A) would not prevent or delay consummation of any of the transactions contemplated by this Agreement

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in any material respect, or otherwise prevent MKS from performing its obligations under this Agreement in any material respect, or (B) would not reasonably be likely to have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of this Agreement will not, require any consent, approval, authorization or permit of, or filing with or notification to, any person or entity, including any court, administrative agency, commission or other governmental or regulatory authority, domestic or foreign (each a "Governmental Entity"), or under any MKS material contract, except as has been obtained and except where failure to obtain such consent, approval, authorization or permit or to file such notification would not have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of MKS, (ii) conflict with or violate any Law applicable to MKS or by which any of its properties or assets is bound or affected, result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any of the properties or assets of MKS pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which MKS or any of its properties or assets is bound or affected, including under any MKS material contract, except, in the case of clauses (ii) and (iii) above, for any such conflicts or violations that (A) would not prevent or delay consummation any of the transactions contemplated by this Agreement in any material respect, or otherwise prevent MKS from performing its obligations under this Agreement in any material respect, or (B) would not reasonably be likely to have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of this Agreement will not, require any consent, approval, authorization or permit of, or filing with or notification to, any person or entity, including any Governmental Entity, or under any MKS material contract, except as has been obtained and except where failure to obtain such consent, approval, authorization or permit or to file such notification would not have a material adverse effect on MKS-Dominican.

**5. Absence of Litigation**

There are no claims, actions, suits, arbitrations, grievances, summonses, subpoenas, inquiries or proceedings of any nature, civil, criminal, regulatory or otherwise, in law or equity ("Actions") pending or, to the knowledge of MKS, threatened, against MKS or any MKS Subsidiary or any of their respective properties before any Governmental Entity, which are reasonably likely to have a MKS Material Adverse Effect. Neither MKS nor any MKS Subsidiary has filed for relief in bankruptcy or had entered against it an order for relief in bankruptcy.

**6. Licenses and Permits; Compliance with Laws**

As necessary to effectuate the terms of this Agreement, MKS is in compliance with all Laws and regulations applicable thereto, and any Laws and regulations related to or administered by any entity or organization, whether governmental, government chartered, tribal, private, or quasi-private,

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that engages in granting or withholding licenses, permits, authorizations, certifications, consents, accreditations or similar approvals to institutions of higher education or post-secondary institutions in accordance with standards relating to the performance, operation, financial condition, or academic standards of such institutions (collectively, "MKS Education Requirements"), in each of the foregoing cases except for such failures which would not be reasonably likely to have a material adverse effect on MKS-Dominican.

Subject to the approval of WSCUC and the federal Department of Education, MKS has all material licenses, permits, authorizations, certifications, and similar approvals necessary to conduct the business and operations of MKS, in the manner and to the full extent that they are now being conducted and in accordance with applicable MKS Education Requirements, including any permit or authorization required for MKS or its Affiliates or their employees or agents to recruit students in any state where they engage employees or agents to recruit students (collectively, the "MKS Educational Approvals"). No proceeding for the suspension or cancellation of any MKS Educational Approval is pending or, to the knowledge of MKS threatened. MKS has not received any notice that any MKS Educational Approval will not be renewed, and MKS has no knowledge of any basis for non-renewal. MKS has no any knowledge of any pending investigation, audit, or review of any MKS Educational Approvals.

MKS has not participated in Title IV Programs as an eligible institution, or as a Third-Party Servicer.

MKS is not, and does not have any principal or Affiliate (as those terms are defined in 34 C.F.R. part 85) that is, debarred or suspended under Executive Order (E.O.) 12549 (3 C.F.R., 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 C.F.R. part 9, subpart 9.4, or engaging in any activity that is cause under 34 C.F.R. 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 C.F.R., 1986 Comp., p. 189) or the FAR, 48 C.F.R. part 9, subpart 9.4.

To the knowledge of MKS, MKS does not employ nor has employed, any individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

**7. Brokers**

No broker, finder or investment banker or other person or entity is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions with Dominican contemplated by this Agreement based upon arrangements made by or on behalf of MKS.

**8. Taxes**

MKS has filed all Tax Returns (as defined herein) required to be filed, and have paid all federal and material other Taxes levied or imposed on its or its properties, income or assets or otherwise due

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as reflected on such Tax Returns unless such unpaid Taxes and assessments are being contested in good faith (and reserves with respect thereto are being maintained in accordance with GAAP).

**9. Properties; Assets**

The assets and properties of MKS are in good operating condition and repair (ordinary wear and tear excepted), and are sufficient to conduct the businesses and operations of MKS as contemplated under this Agreement.

**10. Subsidiaries and Affiliates**

MKS does not have any controlled subsidiaries or other controlled Affiliates.

**E. Representations and Warranties of Dominican**

Dominican represents and warrants to MKS as of the date of this Agreement as follows:

**1. Authority**

Dominican has the necessary power and authority to own, operate, lease and otherwise to hold and operate its assets and properties and to carry on its business as now being conducted, to enter into this Agreement to perform its obligations hereunder and to consummate the transactions contemplated hereby.

The execution and delivery of this Agreement by Dominican and the consummation by Dominican of the transactions contemplated hereby have been duly and validly authorized by Dominican's Board of Trustees, as that authority has been delegated. Subject to the approval of WSCUC and the Department of Education, no other applicable governing body, and no other proceedings on the part of Dominican are necessary for Dominican to authorize this Agreement or for Dominican to consummate the transactions contemplated hereby.

This Agreement has been duly executed and delivered by Dominican and constitutes a legal, valid and binding obligation of Dominican, enforceable in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by the application of general equitable principles.

**2. Organization and Qualification**

Dominican is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California. Dominican is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failures which would not reasonably be likely to have a Material Adverse Effect.

**3. No Conflict; Required Filings and Consents**

The execution and delivery of this Agreement by Dominican does not, and the performance by Dominican of its obligations under this Agreement will not, with or without the giving of notice or the



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lapse of time or both, (i) conflict with or violate the organizational documents of Dominican, (ii) conflict with or violate any Laws applicable to Dominican or by which any of its properties or assets is bound or affected or (iii) result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of Encumbrances on any of the properties or assets of Dominican pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Dominican or any of its properties or assets is bound or affected.

**4. Absence of Litigation**

There are no Actions pending or, to the knowledge of Dominican, threatened against Dominican or any of its respective properties before any Governmental Entity, which are reasonably likely to have a material adverse effect on MKS-Dominican.

**5. Licenses and Permits; Compliance with Laws**

Subject to the approval of WSCUC and the federal Department of Education, as necessary to effectuate the terms of this Agreement, Dominican is in compliance with all Laws and accreditation requirements applicable thereto, including the provisions of the Title IV Programs, any regulations implementing or relating to the Title IV Programs, and any Laws and accreditation requirements related to or administered by any entity or organization, whether governmental, government chartered, tribal, private, or quasi-private, that engages in granting or withholding licenses, permits, authorizations, certifications, consents, accreditations or similar approvals to institutions of higher education or post-secondary institutions in accordance with standards relating to the performance, operation, financial condition, or academic standards of such institutions (collectively, “Dominican Education Requirements”), including any Laws and accreditation requirements related to any form of student financial assistance, in each of the foregoing cases except for such failures which would not be reasonably likely to have a Material Adverse Effect.

Subject to the approval of WSCUC and the federal Department of Education, Dominican has all material licenses, permits, authorizations, certifications, accreditations and similar approvals necessary to conduct the business and operations of Dominican, in the manner and to the full extent that they are now being conducted and in accordance with applicable Dominican Education Requirements, including any permit or authorization required for Dominican or its employees or agents to recruit students in any state where they engage employees or agents to recruit students (collectively, the “Dominican Educational Approvals”), (ii) no proceeding for the suspension or cancellation of any Dominican Educational Approval is pending or, to the knowledge of Dominican, threatened, (iii) Dominican has not received any notice that any Dominican Educational Approval will not be renewed, and Dominican has no knowledge of any basis for non-renewal and (iv) Dominican has no knowledge of any threatened or pending investigation, audit, or review of any Dominican Educational Approvals.

Subject to the approval of WSCUC and the federal Department of Education, Dominican has all approvals required pursuant to its policies and procedures to offer any initial MKS-Dominican Programs and, to the best of Dominican’s knowledge and belief, Dominican has all licenses, authorizations and other necessary approvals from the state, WASC and ED to offer any initial MKS-Dominican Programs on the terms set forth in this Agreement.

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Dominican is certified by ED as an eligible institution under the Title IV Programs and is a party to, and in material compliance with, a valid program participation agreement with ED respecting its participation in the Title IV Programs, (ii) Dominican is in material compliance with any and all laws and regulations relating to the Title IV Programs and (iii) Dominican has no knowledge of any threatened or pending investigation, audit, or review of its participation in any of the Title IV Programs.

To Dominican's knowledge, no person who exercises substantial control over Dominican (as the term "substantial control" is defined under 34 C.F.R. § 600.21(a)(6) or § 668.174(c)) or any member or members of that person's family (as the term "family" is defined in 34 C.F.R. § 668.174(c)(4) or § 600.21(f)), alone or together, exercises or has exercised, substantial control over another institution or a Third-Party Servicer that owes a liability for a violation of any requirement of the Title IV Programs and is not repaying such liability in accordance with an agreement with ED.

Dominican has not filed for relief in bankruptcy or had entered against it an order for relief in bankruptcy.

To Dominican's knowledge, Dominican does not employ in a capacity that involves the administration of the Title IV Programs or receipt of funds under the Title IV Programs any individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds. To Dominican's knowledge, Dominican does not contract with, an institution or Third-Party Servicer that (i) has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of federal, state, or local government funds, (ii) has been convicted of, pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or (iii) has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

Dominican does not currently contract with a Third-Party Servicer to provide any services in connection with the processing or administration of Dominican's financial assistance programs, including the Title IV Programs.

Dominican is not, and does not have any principal or Affiliate (as those terms are defined in 34 C.F.R. part 85) that is, debarred or suspended under Executive Order (E.O.) 12549 (3 C.F.R., 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 C.F.R. part 9, subpart 9.4, or engaging in any activity that is cause under 34 C.F.R. 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 C.F.R., 1986 Comp., p. 189) or the FAR, 48 C.F.R. part 9, subpart 9.4.

**6. Brokers**

No broker, finder or investment banker or other person or entity is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions with Dominican contemplated by this Agreement based upon arrangements made by or on behalf of Dominican.

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**7. Properties; Assets**

Subject to the Dominican Technology Improvements required by this Agreement, the assets and properties of Dominican, taken as a whole, are in good operating condition and repair (ordinary wear and tear excepted), and are sufficient to conduct the businesses and operations of Dominican as set forth in this Agreement.

**8. Subsidiaries and Affiliates**

Dominican does not have any controlled subsidiaries or other controlled Affiliates (“Dominican Subsidiaries”).

**F. Choice of Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (excluding the choice of law principles thereof).

**G. Amendment; Waiver**

No amendment or waiver of any provision of this Agreement, or consent to any departure by either party from any such provision, shall be effective unless the same shall be in writing and signed by the parties and, in any case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**H. Severability**

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

**I. Confidential Information; Publicity**

Each party acknowledges and agrees that, in connection with this Agreement, it may obtain or has already obtained Confidential Information of the other.

“Confidential Information” shall mean information of a confidential or proprietary nature, in any form or medium, regardless of whether such information is marked as confidential, including information disclosed by MKS to Dominican or vice versa, whether or not it was developed by the disclosing party or acquired through a license, agreement or otherwise, which is not generally known to the public, including, without limitation, any research program, research plans, data, know-how, trade secrets, concepts, discoveries, methods, results, information regarding sources of supply, business plans, partners, clients, potential agreements, the existence, scope and activities of any research, development, marketing, or other projects, and other similar information with like characteristics; provided, however, that “Confidential Information” shall not include information that each of MKS, on the one hand, and Dominican, on the other hand, can demonstrate: (i) was independently developed by it or any of its Affiliates without reference to the Confidential Information of the other or any of the other’s Affiliates; (ii) is or becomes generally available to the public through

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no fault of its own or any of its Affiliates; (iii) was lawfully obtained by it or any of its Affiliates without any obligation of confidentiality; or (iv) was known by it or any of its Affiliates prior to receipt thereof. In the event that each of MKS, on the one hand, and Dominican, on the other hand, or any of their Affiliates, becomes legally compelled, or a third party (including a government agency) seeks to compel it or any of its Affiliates, to disclose any Confidential Information of the other or any of the other's Affiliates, the compelled party shall, and if its Affiliate is a compelled party shall cause such Affiliate to, provide immediate notice of the foregoing to the other party so that the other party or its Affiliate may seek a protective order or other appropriate remedy, and the compelled party shall, and if its Affiliate is a compelled party shall cause its Affiliate to, use reasonable efforts to preserve the confidentiality of any such Confidential Information, including, without limitation, by cooperating with the other party or its Affiliate, to obtain a protective order or other appropriate remedy.

Each Party (i) shall protect the Confidential Information of the other using the same degree of protection that it uses for its own confidential information of a similar nature, but in no event shall it use less than a reasonable degree of protection, to prevent any unauthorized disclosure or use of such Confidential Information; (ii) shall not use such Confidential Information for any purpose other than the purposes contemplated by this Agreement; (iii) shall not disclose such Confidential Information to any third party, except as authorized by this Agreement or authorized by the other in advance in writing; (iv) shall limit dissemination of such Confidential Information to those individuals who have a need to know or use such Confidential Information; and (v) shall promptly advise the other of any information it has or receives of any actual or potential unauthorized use or disclosure of Confidential Information of the other Party.

Each Party may disclose Confidential Information to its directors, officers, stockholders, employees and trustees and those of its Affiliates and to its legal, accounting and financial advisors who are under a professional or other obligation to maintain such Confidential Information in confidence, in each case on a need-to-know basis and shall cause each of the foregoing to comply with the provisions of this Section. Each Party may disclose the Confidential Information of the other to those consultants and independent contractors, [financing (or potential financing) sources and their advisors, business partners and potential business partners and their advisors] who have entered into appropriate confidentiality agreements with terms no less restrictive than this Agreement and shall ensure compliance with the terms of such agreements; provided, however, in the event that a Party determines that it is unable to secure any such confidentiality agreement from any of the foregoing persons or entities' or from any accrediting agency, it may seek the approval from the other to make such disclosure without the benefit of such agreement, which approval shall be granted if reasonable in light of the relevant facts and circumstances (which may include a confidentiality agreement on other terms).

If Dominican provides MKS with any legally confidential information including but not limited to confidential personnel information or "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations ("FERPA"), the School hereby certifies that collection of this information from Dominican is necessary for the performance of MKS's duties and responsibilities on behalf of Dominican under this Agreement. MKS further certifies that it will maintain the confidentiality of this information and that it will not re-

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disclose confidential personnel information or personally identifiable information pursuant to FERPA or by other State and Federal laws.

If either Party experiences a security breach concerning any information covered by this Agreement, and such breach is covered by California or federal law, then the breached Party will:

- a. fully comply with obligations under the applicable law,
- b. immediately notify the other Party and fully cooperate with the other Party in carrying out obligations under any applicable law. It is expressly agreed by the Parties that the provisions of this Section shall survive the termination, for any reason, of this Agreement and shall be binding on each Party, its successors and assigns, for the benefit of the other Party and its affiliates, successors and assigns.

**J. Binding Effect; Third Party Beneficiaries**

This Agreement shall inure to the benefit of, and be binding upon, Dominican and MKS, and their respective successors and permitted assigns. The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the parties hereto. Except as set forth herein with respect to indemnification, the parties agree that none of the provisions of this Agreement are intended for the benefit of any third party and that no such third party shall have the right to enforce the provisions of this Agreement.

**K. Assignment**

This Agreement and the rights of each party hereunder may not be assigned without the prior written consent of the other party (which consent may be withheld in the applicable entity's sole discretion).

**L. Notices**

All notices and other notifications given or made pursuant to this Agreement shall be in writing, addressed to the receiving party at the address set forth below (as it may be modified by proper notice) and shall be effective (a) when delivered or tendered in person and a written receipt confirms such delivery; (b) if telecopied, when receipt confirmed; (c) if sent by certified mail (return receipt requested), postage pre-paid, five business days after being so sent; or (d) if sent by reputable overnight courier, postage prepaid, two business days after being so sent:

If to Dominican:

Dominican University of California  
Attention: Mary B. Marcy and Nicola Pitchford  
Guzman Hall – 2<sup>nd</sup> Floor  
50 Acacia Avenue  
San Rafael, CA 94901

With copy to:

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Natasha J. Baker  
Hirschfeld Kraemer LLP  
505 Montgomery Street, 13<sup>th</sup> Floor  
San Francisco, CA 94111

If to MKS:

Make School Inc.  
Attention: Jeremy Rossman  
1547 Mission Street  
San Francisco, CA 94103

**M. Entire Agreement**

This Agreement (including the documents referred to herein) constitute the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

**N. Headings**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**O. Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic or pdf copies shall be deemed to be originals.

**P. No Agency or Joint Venture**

The parties acknowledge and agree that they are dealing with each other as independent contractors and this Agreement does not create a partnership, joint venture or agency relationship. Neither party shall act or have the power to act for the other in any respect whatsoever. The relationship between Dominican and MKS shall be and shall be deemed to be that of independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Neither party is authorized to bind the other in any respect whatsoever. The parties shall have no authority to, and covenant that they will not attempt to: (i) accept offers in the other party's name, (ii) enter into or modify any contract on behalf of the other party or (iii) make for enlarge any representations, warranties or guaranties of the other party.

**Q. Dispute Resolution**

All controversies, disputes, disagreements or claims arising out of or relating to this MOU, including any question regarding its existence, interpretation, validity or termination, shall be referred to and definitively resolved by mandatory binding arbitration. Arbitration shall be conducted in San

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Francisco and shall be governed by and apply California law. Arbitration shall be conducted in accordance with JAMS' Comprehensive Arbitration Rules and Procedures, by a single arbitrator who shall have not represented either University or any affiliate of either University in any capacity. Any decision rendered by the arbitrator shall be final and binding on the Universities, shall not be subject to de novo judicial review, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the authority to require the losing University to pay all costs associated with such arbitration, including attorneys' expenses and fees, expert fees, and the expenses and fees of the arbitrator. It is the express intent and understanding of the Universities that each shall be entitled to enforce its respective rights under any provision hereof through specific performance, in addition to recovering damages caused by a breach of any provision hereof, and to obtain any and all other equitable remedies as may be awarded by the arbitrator. Notwithstanding the above, each University shall have the right to seek provisional remedies from a court of competent jurisdiction. The provisions of this Section shall survive the termination of this Agreement.


**R. Acknowledgment**

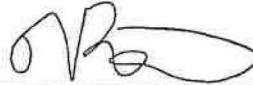
Each party acknowledges and represents that, in executing this Agreement it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

I have reviewed the foregoing. I understand and agree to the same.

Date: 5/29/18

Date: 5/29/18

By:   
Dr. Mary Marcy  
President  
Dominican University of California

By:   
Jeremy Rossmann  
CEO  
Make School, Inc.

# **EXHIBIT C**



## Payment Agreement

Payor:

Name: [Student Name]  
Address: [Student Address # 1]  
          [Student Address # 2]  
Phone: [Student phone #]

Payee:

2023 MS Settlement SPV 1 LLC  
c/o Launch Servicing, LLC  
P.O. Box 679220  
Dallas, TX 75267-9220  
(877) 354-2629

Principal Amount: \$XXXXXX  
Payment Term: XX Months  
Minimum Income Threshold (monthly): \$5,000

### 1. RECITALS.

- 1.1. On or about June 25, 2021, Uchenna Aguocha and 46 other plaintiffs (collectively, “Plaintiffs”) filed a Complaint against Make School PBC f/k/a Make School Inc. (“Make School PBC”); Make School ABC, LLC; Make School ISA SPV, LLC; and Vemo Education, Inc. (together, “Defendants”) in the Superior Court of California, County of San Francisco, thereby commencing the action entitled *Aguocha, et al. v. Make School PBC, et al.*, Case No. CGC-21-592710 (the “Action”). The Complaint asserted five causes of action, for (1) declarative and injunctive relief, (2) violation of California Business and Professions Code Section 17200, et seq., (3) violation of California Business and Professions Code Section 17500, et seq., (4) violation of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq., and (5) unjust enrichment.
- 1.2. With the assistance of a mediator, Plaintiffs and Defendants reached a settlement of the Action on a class action basis (the “Settlement”). Among other things, and subject to court approval, the Settlement provides for the cancellation of certain ISAs, and for other ISAs not eligible for cancellation to be consolidated and replaced by payment agreements with more favorable terms than the ISAs they replace.
- 1.3. You entered into ISAs with Make School PBC that are subject to the Settlement, and which have been converted into this Payment Agreement by operation of the Judgment in the Action, which was entered on [DATE]. Because You did not opt out of the Settlement, You are bound by this Payment Agreement.

### 2. DEFINITIONS. As used in this Payment Agreement, each of the following words shall be defined as follows:

- 2.1. “Grace Period” means a 60-day period following the Effective Date specified in the Settlement Agreement.
- 2.2. “Gross Earned Income” means your total gross wage and self-employment income. On an annual basis, this amount is currently the sum of Line 7 and Line 12 of IRS Form 1040 or Line 1 of the 1040EZ on U.S. Federal Income Tax Returns. If applicable, “Gross Earned Income” includes, at a minimum, all income reported on a joint income tax return minus, to the extent documented to Our satisfaction, any income earned solely by Your spouse. In Our discretion, We may estimate your Gross Earned Income using documentation other than Your U.S. federal income tax return, provided the documentation is another verifiable source acceptable to Us.

- 2.3. "Payment Term" means the maximum number of months for which you may be required to make a monthly payment.
- 2.4. "Principal" or "Principal Amount" means the total dollar amount of your obligation under this Payment Agreement, as described in the Settlement Agreement.
- 2.5. "Servicer" means Launch Finance, LLC (the "Servicer"), but we reserve the right to transfer the servicing of your Agreement to a different servicer after first providing you with advance written notice of such transfer.
- 2.6. "Settlement Agreement" means the Settlement Agreement documenting the Settlement of the Action.
- 2.7. "You" and "Your" mean the consumer who is named above.
- 2.8. "We," "Our," and "Us," mean the Payee named above, and its affiliates, subsidiaries, and assigns. Unless otherwise indicated, these terms shall also include the Servicer.
3. **PROMISE TO PAY.** You promise to pay to Us, in accordance with the terms of the Settlement Agreement and this Payment Agreement, the amounts described herein, but not to exceed an amount equal to the Principal Amount, and all other fees or charges that may become due or owing in accordance with this Payment Agreement.
4. **MONTHLY PAYMENTS.**
  - 4.1. **When due.** Monthly payments will be due once each month following the end of your Grace Period on the monthly due date determined by Us, except that no monthly payment will be required in connection with any month for which We have approved your Deferment request as described in Section 5 below ("Deferments").
  - 4.2. **End Date.** Your monthly payments will end upon the first to occur of:
    - 4.2.1. You have fully paid to us the Principal Amount, plus any other amounts that may become due under this Payment Agreement; or
    - 4.2.2. The Payment Term has elapsed, except that the end of the Payment Term shall not relieve You of any payment obligation(s) you may have incurred to Us (such as late fees) prior to the end of the Payment Term.
  - 4.3. **Monthly Payment Amount.** Your monthly payment amount will be equal to the Principal Amount divided by the Payment Term (subject to rounding).
  - 4.4. **How To Pay.** Payments must be made in accordance with any payment instructions We provide to You, or may be mailed to Us at Launch Servicing, LLC, P.O. Box 679220, Dallas, TX 75267-9220 (or such other address as We may notify You of in the future). You must make timely payments regardless of whether or not we send you any monthly statements of account. Payments must be made in US dollars and from a US-based bank account.
5. **DEFERMENTS.**
  - 5.1. **Deferments.** You will not be required to make a monthly payment for any month in which Your Deferment request is approved. There is no limit to the number of Deferments that You may obtain.
  - 5.2. **Deferment Eligibility Requirements.** You will be eligible for a Deferment for any month in which each of the following conditions (the "Deferment Eligibility Requirements") are met:

- 5.2.1. You submit a request for a Deferment at least seven (7) days before the due date of the monthly payment for which you are requesting a Deferment together with documentation reasonably demonstrating that you meet each of the Deferment Eligibility Requirements in accordance with our established procedures; and
  - 5.2.2. (i) you have enrolled at least half time in higher education or training or (ii) you earn less than \$5,000.00/month (equivalent to \$60,000/year), including if you are unemployed or not in the labor force.
- 5.3. **Approval of Deferment Requests.** We agree to grant Your Deferment request if We receive documentation from You that reasonably demonstrates that You meet each of the Deferment Eligibility Requirements. You must pay Your regularly scheduled monthly payment unless we expressly notify you in writing that We have granted your Deferment request.
- 5.4. **Deferment Validation Process.** If We reasonably believe that You have provided any inaccurate or incomplete information in connection with any Deferment request, We may request, and You agree to provide, information and documentation that We reasonably believe will enable Us to confirm Your eligibility for such Deferment.
6. **RIGHT TO PREPAY.** You have the right to prepay all or any part of the outstanding balance at any time without penalty. You may request a payoff statement from Us at any time and without any additional charge. You also have the right to pay off this Payment Agreement by paying the Early Payoff Amount set forth in Section IV.A.5 of the Settlement Agreement. The Early Payoff Amount is set forth in the cover letter accompanying this Payment Agreement. In order to pay off this Agreement by paying the Early Payoff Amount, You must pay this amount within 90 days of the date this Payment Agreement was transmitted to You, which date is stated in the cover letter accompanying this Payment Agreement.
7. **REPAYMENT ASSISTANCE.** In addition to the Deferment options available to You under this Agreement, We may also offer certain other payment assistance options in the event that You are experiencing difficulty making payments as required. You may contact us through the methods outlined here: <https://www.launchservicing.com/contact/>.
8. **DEATH OR TOTAL AND PERMANENT DISABILITY.** If You become totally and permanently disabled or die before You complete your obligations under this Agreement, We will waive Our right to all amounts that would otherwise be required to be paid, including any past due amounts or fees, as follows:
  - 8.1. **Death.** To be eligible for a waiver based on Your death, We must receive documentation of Your death in a form reasonably acceptable to Us.
  - 8.2. **Disability.** If You reasonably demonstrate to Us that You became unable to work in any occupation due to a condition that began or deteriorated after the date of the latest Final Disclosure for any of Your ISAs, and if such disability is expected to be permanent, We will waive all further payments that You might otherwise have to make, including payments of any past due amounts or fees. To demonstrate to Us that You are eligible for a waiver because of Your total and permanent disability, You must submit to Us a disability waiver request in a form reasonably acceptable to Us accompanied by a physician's statement, or documentation from the Department of Veterans Affairs or the Social Security Administration, and such other information or documentation We may reasonably require confirming Your eligibility for a disability waiver as described above. You must continue to make any payments that may otherwise be due until We confirm to You in writing that We have waived Your obligations under this Agreement. If

We approve your disability waiver request, Your disability waiver will be effective as of the date We receive Your completed disability waiver request.

This waiver relates solely to amounts due under this Agreement, and does not waive any other past, present, or future obligations You may have to Us, including, but not limited to, any other payment obligations You might have to Us.

8.3. Residents of certain states are entitled to additional protections in connection with a disability, even if such disability is not total or permanent.

## 9. FEES.

9.1. **Late Fees.** If You fail to make any part of an installment payment within 10 days of the date when such payment is due, You will be required to pay a late charge of the lesser of \$10 or 6% of the amount of the payment that is late. You will pay only one late fee for any late installment payment, regardless of the number of days it is late.

9.2. **Dishonored Payments.** If a payment by check or draft is not honored by Your bank, then You will be charged a fee of \$15. This fee is in addition to any fee that Your financial institution may also charge You.

9.3. **Collection Fees and Costs.** Unless prohibited by any applicable law, You agree to pay Us for all costs of collection that We incur in collecting any unpaid balance due to Us under this Agreement (the "Collection Costs").

## 10. DEFAULT.

10.1. **Events of Default.** We may declare You to be in default of Your obligations under this Payment Agreement if You fail to pay the entire amount of each monthly payment within 90 days of when due, if You fail to fulfill any of Your other obligations under this Agreement, or if any of the information that You provided to us in connection with this Payment Agreement or your Income Share Agreement(s) was materially false or misleading. Subject to applicable law (including any notice and/or cure rights provided by applicable law), We will send you written notice if We deem You to be in default under this Agreement.

10.2. **Our Rights Upon Default.** If We declare You to be in default, We may elect to take any or all of the following steps:

10.2.1. We may declare that the entire balance outstanding under this Agreement shall be due and payable immediately; and

10.2.2. If permitted by applicable law, We may add to your principal balance due under this Agreement any or all unpaid amounts (including, but not limited to, any charges, costs, or fees). This process is generally referred to as "Capitalization" of such amounts.

11. **TAX IMPLICATIONS.** If we waive any amounts due to us under this Agreement, for example, as a result of your death or total and permanent disability, applicable law may require Us to report such amounts to the applicable taxation authorities, who may consider such amounts to be taxable income to You. Please consult with Your tax advisor for more information.

12. **NO WAIVER.** We will not lose any rights under this Agreement if We delay in taking action for any reason. You agree that You have waived presentment for payment, demand, protest, notice of protest, dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default, or enforcement of this Agreement. We may accept late payments, partial payments, or payments marked "payment in full" or with any other restrictive endorsement without losing any of Our rights under this Agreement.

13. **ASSIGNMENT.** You may not assign or otherwise transfer Your rights under this Agreement to anyone else. We may sell, transfer, or assign this Agreement, without notice to You, unless required by law, and Your rights and obligations under this Agreement will continue unchanged.
14. **OBTAINING AND FURNISHING CREDIT REPORT INFORMATION.** You authorize us to obtain Your credit report, verify the information You provide to us, and gather additional information that may help Us assess and understand Your performance under this Agreement. You understand that We may verify Your information and obtain additional information about You using a number of sources, including but not limited to consumer reporting agencies, other third-party databases, past and present employers, public sources, and personal references provided by You. If you ask, You will be informed whether We obtained a credit report and, if so, the name and address of the consumer reporting agency that furnished the report. You also understand and agree that We may obtain a credit report and gather additional information, including from the sources described above, in connection with the review of Your account or the collection of any amounts owed under this Agreement. We may report information about Your account to credit bureaus. Late payments, missed payments, or other defaults on Your account may be reflected in Your credit report.

15. **COMMUNICATIONS.**

- 15.1. **Updating Your Contact Information.** You agree to notify Us of any change in your name, address, phone number, or e-mail address within ten (10) days of such change.
- 15.2. **Electronic Communications.** We may decide to deliver any documents or notices related to this Payment Agreement by electronic means. You agree to receive such documents or notices by electronic delivery and to participate through an online or electronic system established and maintained by Us or a third party designated by Us.
- 15.3. **Automatic Reminders/Communications Consent.** We may use automated systems, including but not limited to automatic telephone dialing systems, text messages (such as SMS, MMS, or successor protocols and technologies), prerecorded messages and/or artificial voice calls, and electronic mail, to communicate with You regarding Your account, including payment due dates, missed payments, and other important information, and other communications relating to this Agreement and/or your relationship with Us. Telephone messages may be played by a machine automatically when the telephone is answered, whether answered by You or someone else. These messages may also be recorded in your voicemail. You give us Your permission to make such calls and/or send text messages to any telephone number You provide Us now or in the future and to play prerecorded messages or send text messages with information about this Agreement over the phone. You also give Us permission to communicate such information to You via electronic mail. You agree that We will not be liable to You for any such calls or electronic communications, even if information is communicated to an unintended recipient. You verify that any contact information You provide to us, including, but not limited to, Your name, mailing address, email address, Your residential or business telephone number, and/or Your mobile telephone number, is true and accurate. You also verify that You are the current subscriber or owner of any telephone number that You provide. You are strictly prohibited from providing a phone number that is not Your own. Should any of Your contact information change, including ownership of Your telephone numbers, You agree to immediately notify Us before the change goes into effect by writing to Us at Launch Servicing, LLC, P.O. Box 91910, Sioux Falls, SD, 57109-1910 or calling Us at (877) 354-2629. You understand that, when You receive such calls or electronic communications, You may incur a charge from the company that provides You with telecommunications, wireless, and/or internet services. You agree that We have no liability for such charges. You agree that this authorization constitutes a bargained-for exchange. To the

extent You have the right under applicable law to revoke this authorization, You agree You may do so only by updating your preferences through your online servicing account or by writing to Us at Launch Servicing, LLC, P.O. Box 91910, Sioux Falls, SD, 57109-1910 or calling Us at (877) 354-2629.

15.4. **Telephone Recording.** You understand and agree that We may monitor and/or record any of Your phone conversations or other communications with us.

16. **DISPUTES AND COMPLAINTS.** All disputes or complaints relating to this Payment Agreement and the servicing of this Payment Agreement must be submitted to Us by writing to Us at Launch Servicing, LLC, P.O. Box 91910, Sioux Falls, SD, 57109-1910 or calling Us at (877) 354-2629. Such disputes include, but shall not be limited to, disputes relating to any of the following: the contents of this Payment Agreement, all amounts due or claimed to be due, deferment and income-documentation submission or processing, credit reporting (if any), or identity-theft claims (i.e., that Your personal information was used to enter into this Payment Agreement without Your authorization).

17. **NOTICE AND CURE.** Prior to initiating any lawsuit or arbitration against Us or against Our Servicer, You must provide to Us written notice of Your claim (a “Claim Notice”) and a reasonable opportunity, not less than 30 days, to resolve Your claim. Prior to initiating any lawsuit or arbitration against You, We or Our Servicer will provide You with a Claim Notice and a reasonable opportunity, not less than 30 days, to resolve Our claim. If such lawsuit or arbitration relates to Your default under this Agreement, any notice of default or notice to cure that We send to You will be Our Claim Notice. If We are sending You a Claim Notice, We will send it to You at the most recent email and/or physical mail address appearing in Our records or, if You are known to be represented by an attorney, to Your attorney’s office address. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. You and We agree to reasonably cooperate in providing to each other any information or documentation relevant to the allegations described in the Claim Notice and to act in good faith to resolve the allegations before filing any lawsuit or arbitration.

## 18. **ARBITRATION AGREEMENT.**

18.1. **Arbitration.** Except as expressly provided in this Section, You and We agree that any past, present, or future claim, dispute, or controversy, regardless of the legal theory on which it is based, arising out of, relating to, or in connection with this Agreement, or that arises from or is related to any relationship resulting from this Agreement (a “Claim”), may be submitted to and resolved on an individual basis by binding arbitration under the Federal Arbitration Act, 9 U.S.C. §§1 et seq. (the “FAA”), before the American Arbitration Association (the “AAA”) under its Consumer Arbitration Rules (the “AAA Rules”), in effect at the time the arbitration is brought, unless We and You agree in writing to arbitrate before a different party. If the AAA is unable to serve as administrator—and We and You cannot agree on a replacement—a court with jurisdiction will select the administrator or arbitrator. The AAA Rules are available online at <http://www.adr.org> or you can contact the AAA at 800-778-7879. If a Claim is arbitrated, it will be resolved by a neutral third-party arbitrator, and not by a judge or a jury, and You and We knowingly and voluntarily waive the right to a jury trial on such Claim.

The party bringing the Claim may elect arbitration of the Claim by initiating an arbitration in accordance with the Administrator’s rules. The other party may elect arbitration by giving written notice of an election to arbitrate. This notice may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If such a notice is given, the Claim shall be resolved by arbitration under this Arbitration Agreement and the applicable rules of the administrator then in effect. It will be up to the party bringing the Claim to commence the arbitration proceeding. Even if all parties have opted to litigate a Claim in court, We or You may

elect arbitration with respect to any Claim made by a new party or any Claim later asserted by a party in that or any related or unrelated lawsuit (including a Claim initially asserted on an individual basis but modified to be asserted on a class, representative, or multi-party basis). Nothing in that litigation shall constitute a waiver of any rights under this Arbitration Agreement. The arbitrator will be selected under the Administrator's rules, except that the arbitrator must be a lawyer with at least 10 years of experience or a former judge, unless You and We agree otherwise.

"Claim" has the broadest possible meaning and includes initial claims, counterclaims, cross-claims, and third-party claims. It includes disputes based upon contract, tort, consumer rights, fraud, and other intentional torts, constitution, statute, regulation, ordinance, common law, and equity (including any claim for injunctive or declaratory relief). For purposes of this Arbitration Agreement the terms "We" and "Us" include (a) Launch Servicing, LLC, (b) each of the Defendants that is a party to the Settlement Agreement; (c) any successor, successor-in-interest, transferee, assignee, affiliated fund, agent, designee, the Servicer, or any subsequent servicer acting on Our behalf in connection with this Agreement; (d) any affiliates, subsidiaries, and/or parent of the persons and entities referenced in (a), (b), or (c); (e) the officers, directors, employees, stockholders, members, affiliates, subsidiaries, and parents of all of the foregoing in (a) through (d); and (f) any party named as a co-defendant with Us in a Claim asserted by You.

Notwithstanding the above, if a Claim that You or We wish to assert against the other is cognizable in a small claims court (or your state's equivalent court) having jurisdiction over the Claim and the parties, You or We may pursue such Claim in that small claims court; however, if the Claim is transferred, removed, or appealed to a different court, it may be resolved by arbitration as described herein. Nothing in that small claims court lawsuit shall constitute a waiver of any party's rights under this Arbitration Agreement with respect to Claims asserted in any related or unrelated lawsuits.

Any dispute concerning the validity or enforceability of this Arbitration Agreement or any part thereof (including, without limitation, the class action waiver below) must be decided by a court; any dispute concerning the validity or enforceability of the Agreement as a whole is for the arbitrator. Any arbitration hearing that You attend will take place in a location that is reasonably convenient for You. If You cannot obtain a waiver of the AAA's or arbitrator's filing, administrative, hearing, and/or other fees, We will consider in good faith any request by You for Us to bear such fees. Each party will bear the expense of its own attorneys, experts, and witnesses, regardless of which party prevails, unless applicable law or this Agreement gives a right to recover any of those fees from the other party. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation, and privilege rules that would apply in a court proceeding, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory, and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive, and other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of his or her award. The arbitrator's award will be final and binding, except for any appeal right under the FAA. Any court with jurisdiction may enter judgment upon the arbitrator's award. No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have any preclusive effect in an arbitration between the parties to this Arbitration Agreement.

This Arbitration Agreement shall survive the termination of this Agreement, Your fulfillment or default of Your obligations under this Agreement, and/or Your or Our bankruptcy or insolvency (to the extent permitted by applicable law). In the event of any conflict or inconsistency between this Arbitration Agreement and the administrator's rules or other provisions of this Agreement, this Arbitration Agreement will govern.

Nothing in this Agreement precludes You from filing a complaint, or a charge with any governmental agency, or from participating in an administrative investigation of a charge before any appropriate government agency.

**CLASS ACTION WAIVER: NEITHER YOU NOR WE WILL HAVE THE RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR CLASS MEMBER.**

Further, unless both You and We agree otherwise in writing, the arbitrator may not join or consolidate Claims with claims of any other persons. The arbitrator shall have no authority to conduct any class, private attorney general, or other representative proceeding, and shall award declaratory or injunctive relief only in favor of the party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator shall have no authority to issue any relief that applies to any person or entity except You or Us individually. If any portion of this Arbitration Agreement cannot be enforced, the rest of the Arbitration Agreement will continue to apply, except that (a) if a determination is made in a proceeding involving Us and You that the class action waiver is invalid or unenforceable with respect to a claim that does not seek public injunctive relief, only this sentence of this Arbitration Agreement will remain in force and the remainder of this Arbitration Agreement shall be null and void, provided that the determination concerning the class action waiver shall be subject to appeal, and (b) if a Claim is brought seeking public injunctive relief and a court determines that the restrictions in the class action waiver prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such Claim (and that determination becomes final after all appeals have been exhausted), the Claim for public injunctive relief will be determined in court and any individual Claims seeking monetary relief will be arbitrated. In such a case, the parties will request that the court stay the Claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a Claim for public injunctive relief be arbitrated.

This Arbitration Agreement does not apply if you are a member of the Armed Forces or a dependent of a member covered by the federal Military Lending Act.

- 18.2. **Right To Opt-Out.** You may opt-out of this Arbitration Agreement by mailing a signed rejection notice to Us at Launch Servicing, LLC, P.O. Box 91910, Sioux Falls, SD, 57109-1910 within 30 calendar days after the date of this Agreement. Any rejection notice must include Your name, address, email address, telephone number, and account or contract number. If You reject this Arbitration Agreement, no other provision of the Agreement will be affected.
- 18.3. **Waiver of Jury Trial.** YOU ACKNOWLEDGE AND AGREE THAT, INASMUCH AS THE PURPOSE OF THIS ARBITRATION AGREEMENT IS TO REQUIRE THAT ALL CLAIMS MAY BE RESOLVED BY BINDING ARBITRATION, EXCEPT TO THE EXTENT THAT THIS WAIVER IS PROHIBITED BY ANY APPLICABLE LAW, NO PARTY TO THIS PAYMENT AGREEMENT SHALL BE ENTITLED TO A TRIAL BY JURY IF SUCH ARBITRATION AGREEMENT IS IN EFFECT. MOREOVER, TO THE EXTENT YOU TIMELY AND ADEQUATELY REJECT THIS ARBITRATION AGREEMENT, OR IF FOR



ANY OTHER REASON A CLAIM IS NOT ARBITRATED, WE AND YOU KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, EXCEPT TO THE EXTENT THAT THIS WAIVER IS PROHIBITED BY APPLICABLE LAW.

19. **CUSTOMER IDENTIFICATION POLICY.** To help the government fight the funding of terrorism and money laundering activities, We will obtain, verify, and record information that identifies each person who enters into this Agreement. What this means for You: When You enter into this Agreement, We reserve the right to ask for Your name, address, date of birth, and other information that will allow us to identify You. We may also ask to see Your driver's license or other identifying documents, or for You to provide true and correct copies to Us.
20. **GOVERNING LAW.** The validity, interpretation, construction, and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Notwithstanding the foregoing, federal law shall govern the Arbitration Agreement portions of this Agreement.
21. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings, and agreements, whether oral or written, between You and Us relating to the subject matter hereof.
22. **SUCCESSORS AND ASSIGNS.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators, and legal representatives. We may sell, assign, or otherwise transfer any of Our rights, economic benefits, or obligations under this Agreement. You may not assign, whether voluntarily or by operation of law, any of Your rights, economic benefits, or obligations under this Agreement, except with Our prior written consent.
23. **NOTICES.** Any notice, demand, or request required or permitted to be given under this Agreement shall be in writing and, except as otherwise provided, shall be deemed sufficient when sent by email or 2 Business Days after being deposited in the U.S. mail as certified or registered mail with postage prepaid. Notices to Us shall be sent to Launch Servicing, LLC, P.O. Box 91910, Sioux Falls, SD, 57109-1910, or in accordance with such other notification requirements that We may provide to You in writing. Notices to You will be sent to the email and/or physical mail addresses listed above, or to any other email and/or physical address that You provide to Us, unless You have subsequently informed Us that such email or physical address is invalid and have provided Us with an updated email and/or physical address.
24. **SEVERABILITY.** Except as set forth in the Arbitration Agreement, if one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision(s) in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision(s), then (i) such provision(s) shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision(s) were so excluded, and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
25. **NO EXECUTION; ELECTRONIC TRANSACTIONS.** This Agreement need not be executed, as it was formed by operation of law pursuant to the Judgment in the Action. Any amendments to this Agreement may be executed electronically or manually. Execution may be completed in counterparts (including both counterparts that are executed on paper and counterparts that are electronic records and executed electronically), which together constitute a single agreement. Any copy of this

Agreement (including a copy printed from an image of this Agreement that has been stored electronically) shall have the same legal effect as an original.

# **EXHIBIT D**

## E-MAIL NOTICE

### NOTICE OF PROPOSED CLASS ACTION SETTLEMENT INVOLVING MAKE SCHOOL INCOME SHARE AGREEMENTS

This notice advises you of a proposed class action settlement for students with income share agreements obtained from Make School. This notice may affect your legal rights. Please read it carefully.

THIS E-MAIL PROVIDES A WEBSITE AND TELEPHONE NUMBER WHERE YOU CAN OBTAIN ADDITIONAL INFORMATION AND CLAIM DETAILS.

UNIQUE CLASS MEMBER ID CODE:

#####

PASSWORD: #####

**What Is This Notice About?** A proposed settlement has been reached in *Aguocha, et al. v. Make School PBC, et al.*, Case No. CGC-21-592710, a class action in the Superior Court of California, San Francisco County, that may impact your rights. The lawsuit claims that Make School PBC f/k/a Make School Inc. (“Make School PBC”), Make School ABC, LLC, Make School ISA SPV, LLC, and Vemo Education, Inc. (collectively, “Defendants”) misrepresented and omitted material facts concerning Make School PBC’s educational program, accreditation, and income share agreement (“ISA”) costs. The Defendants deny they did anything wrong.

**Am I A Member Of The Settlement Class?** The Settlement Class includes all persons who obtained at least one ISA from Make School between and including June 1, 2015 and [date of preliminary approval] that remained outstanding as of April 28, 2023.

**What Are The Settlement Terms?** The Settlement terms (which are subject to court approval) differ based on the type of ISA you received, when it was obtained, or whether you are eligible for the U.S. Department of Veteran Affairs Yellow Ribbon Program. For example, a Settlement Class Member who received an ISA *prior* to July 12, 2018 solely for paying for tuition will have their ISA voided and cancelled. Settlement Class Members who received an ISA *prior* to July 12, 2018 solely for paying for living expenses, or any ISA *after* July 12, 2018 will be bound by a new no-interest payment plan with a term of 180 months (or 60 or 120 months if you choose). If you are eligible for the U.S. Department of Veteran Affairs Yellow Ribbon Program, your ISAs for tuition – regardless of when you signed them – will be voided and cancelled, provided that you provide proper documentation, along with the attached claim form, showing eligibility for the U.S. Department of Veterans Affairs Yellow Ribbon Program, among other things. To understand how this settlement impacts your specific situation, including the principal and payment amounts of your ISA and the applicable term, please visit [WEBSITE] or call [\_\_\_\_\_] with your unique identifier and password.

**What Are My Rights?** You have a choice of whether to stay in the settlement class or not, and you must decide this now.

1. **You Can Do Nothing.** If you wish to receive the benefits of the Settlement, you do not need to appear at the hearing or take any other action to indicate your approval. If the Court approves the Settlement, you will be bound by the Settlement unless you choose to exclude yourself from the class. You will automatically receive the benefits of the Settlement unless you exclude yourself from the class.
2. **You Can “Opt Out” of the Settlement.** If you wish to exclude yourself, or “opt out” of the Settlement, you must submit your opt-out notice to the Settlement Administrator by \_\_\_\_\_, 2023. If you opt out, you are not entitled to object to the Settlement. Please visit [WEBSITE].com or call [1-800-XXX-XXXX] for additional requirements for the opt-out notice.

3. You Can Object to the Settlement. If you decide to remain in the Class and you wish to object to the settlement, the award of fees and costs to Class Counsel, or the incentive payments to the Settlement Class Representatives, you should submit your objection to the Settlement Administrator by either (1) mailing your objection to CPT Group, 50 Corporate Park, Irvine, CA 92606, or (2) e-mailing the Settlement Administrator at \_\_\_\_\_. You also may object in person at the Final Approval Hearing at the day and time listed below. You may hire your own lawyer, however, if you do, you will be responsible for paying that lawyer on your behalf. Timely objections to the Settlement will be considered by the Court at the Final Approval Hearing.

**Final Approval Hearing.** The Court will hold a hearing on \_\_\_\_\_, 2023, at \_\_:\_\_, before the Honorable Ethan P. Schulman, in Department 304 of the San Francisco Superior Court, 400 McAllister St., San Francisco, CA 94102 to determine whether the Settlement should be approved and whether the application for Class Counsel's attorneys' fees and incentive award to the Settlement Class Representative should be granted.

**THIS IS ONLY A SUMMARY. VISIT [SETTLEMENTWEBSITE.COM](http://SETTLEMENTWEBSITE.COM) OR CALL \_\_\_-\_\_\_-\_\_\_ FOR THE FULL CLASS NOTICE AND ADDITIONAL INFORMATION. PLEASE USE THE UNIQUE CODE AND PASSWORD ON THE FRONT TO ACCESS VIEW YOUR BENEFITS.**

**BY ORDER OF THE SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO**

**EXHIBIT E**

**CALIFORNIA SUPERIOR COURT, COUNTY OF SAN FRANCISCO**

**IF YOU ENTERED INTO AN INCOME SHARE AGREEMENT WITH MAKE SCHOOL PBC/MAKE SCHOOL INC. AFTER JUNE 1, 2015, THIS CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS**

The San Francisco Superior Court authorized this Notice. This isn't a solicitation from a lawyer and you aren't being sued.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

- This notice summarizes a proposed class action settlement of claims brought against Make School PBC f/k/a Make School Inc. ("Make School PBC"), Make School ABC, LLC, Make School ISA SPV, LLC, and Vemo Education, Inc. (collectively, "Defendants") involving alleged misrepresentations and omissions of material facts concerning Make School PBC's educational program, accreditation, and income share agreement ("ISA") costs. The name of the case is *Aguocha, et al. v. Make School PBC, et al.*, Case No. CGC-21-592710.
- You may be entitled to relief and your legal rights will be affected if you are a member of the following Settlement Class:

**All persons who obtained at least one income share agreement from Make School between and including June 1, 2015 and [date of preliminary approval] that remained outstanding as of April 28, 2023. Excluded from the Settlement Class are the judges to whom the Action is assigned and the members of their staff or immediate family.**

- The San Francisco Superior Court will hold a hearing on \_\_\_\_\_, 2023 to decide whether to give final approval to the Settlement. The Court has not found that Defendants did anything wrong and no party has admitted to any wrongdoing or liability. The purpose of this notice is to inform you of the Settlement and of your rights relating to the Settlement.
- Your legal rights are affected whether you act or do not act. Read this Notice and the information on the Settlement Website carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT</b>	
<b>YOU ARE NOT REQUIRED TO DO ANYTHING.</b>	If the Settlement is approved by the Court and you are a member of the settlement class, you will not need to do anything to receive relief. If the Court approves the Settlement, you will be bound by the Settlement unless you choose to exclude yourself from the class.
<b>YOU MAY OPT OUT OF THE SETTLEMENT BY _____, 2023.</b>	If you wish to exclude yourself, or “opt out” of the Settlement, you must submit your opt-out notice to the Settlement Administrator. See details below.
<b>YOU MAY OBJECT TO THE SETTLEMENT BY _____, 2023.</b>	If you wish to object to any part of the Settlement, you may write or e-mail the Settlement Administrator about why you object to the Settlement. See details below.
<b>YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON _____, 2023.</b>	Whether or not a written objection is made, you may attend the Final Approval Hearing about the Settlement either in person or through counsel hired at your own expense.

**THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE BELOW.**

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, including the relief you are entitled to, please visit [SETTLEMENTWEBSITE.COM](http://SETTLEMENTWEBSITE.COM) and use the unique class member ID code and password provided below. You may also contact the Settlement Administrator at the address provided below, access the Court docket online at <https://www.sfsuperiorcourt.org/online-services> or visit the Court during regular business hours at the Civil Records Division, The Civic Center Clerk’s Office, 400 McAllister St., Room 103, San Francisco, CA 94102.

**UNIQUE CLASS MEMBER ID CODE:**

#####

**PASSWORD: #####**



## 1. WHAT IS THIS LAWSUIT ABOUT?

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The lawsuit was brought against Defendants alleging that they misrepresented and omitted material facts concerning the Make School PBC educational program, accreditation, and income share agreement (“ISA”) costs.

The Settlement Class Representatives and Class Counsel have concluded, after carefully considering the relevant facts and the applicable law, that it would be in the best interests of the Class to enter into this Settlement in order to avoid the uncertainties of litigation and obtain the benefits of this Settlement for the Class. After careful investigation and evaluation, the Settlement Class Representatives and Class Counsel believe the Settlement is fair, reasonable, adequate, and in the best interests of the Class.

Defendants deny the allegations, any wrongdoing, and any liability whatsoever, and believe they have many defenses to all of the claims asserted against it in the lawsuit. Defendants believe that they complied and continue to comply in all respects with the law and that no Settlement Class Member has sustained any damages or injuries. Nonetheless, Defendants have concluded that continuing the litigation would be protracted and expensive; and therefore have agreed to the Settlement.

## 2. WHAT IS A CLASS ACTION?

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In a class action, one or more people called class representatives (in this case Eric Botcher and Samuel Galizia ) (“Settlement Class Representatives”) sue on behalf of people who have similar claims.

## 3. WHO IS A CLASS MEMBER?

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The Settlement Class includes all persons who obtained an ISA from Make School PBC between and including June 1, 2015 to [date of preliminary approval], that remained outstanding as of April 28, 2023. Excluded from the Settlement Class are the judges to whom the Action is assigned and the members of their staff or immediate family.

**If you received this notice by e-mail or mail, the records of Launch Servicing, LLC (“Launch”), the servicer of the ISAs, show that you may be a Settlement Class Member in this case. Thus, you have received notice regarding settlement of a case that may affect you.**

## 4. WHAT IF I AM NOT SURE IF I AM INCLUDED IN THE CLASS?

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If you are still not sure whether you are a Settlement Class Member, you can ask for free help. You can call [\_\_\_\_\_] for more information from the Settlement Administrator or review the Settlement documents on [SETTLEMENTWEBSITE.COM](https://SETTLEMENTWEBSITE.COM).

## 5. WHO REPRESENTS THE SETTLEMENT CLASS?

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Eric Botcher and Sam Galizia have been designated by the Court as the Settlement Class Representatives for purposes of the settlement approval process. The Court has appointed Melody L. Sequoia of The Sequoia Law Firm, and William Kennedy of the Consumer Law Office of William E. Kennedy as Class Counsel to represent your interests and those of the Settlement Class. You also have the right to consult with your own attorney, at your own expense, and you may enter an appearance through your own attorney if you desire.

## 6. WHAT ARE THE SETTLEMENT TERMS?

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The Settlement terms (which are subject to court approval) provide for relief based on the type of ISA(s) you obtained, when they were obtained, and whether you qualify for certain benefits as a “Yellow Ribbon Claimant,” as explained below.

If the Settlement is approved by the Court and you do not opt out of the Settlement, your ISAs will be either canceled (so that you owe nothing further on them), restructured into a less expensive, no-interest, income-protected payment plan (“New Agreement”), or a combination of both. The treatment of each of your ISAs depends on a number of factors as explained below.

Under an ISA, you receive an amount of tuition, and/or a stipend for living expenses, in exchange for your agreement to pay a percentage of your income for a set period of time up to a maximum amount, provided that you meet a minimum income requirement. The amount of tuition or stipend you receive is called an “ISA Amount,” which is similar to the principal amount (amount borrowed) on a loan. The maximum amount you are required to pay (that is, the maximum amount of income you are required to share) on each ISA is called the “payment cap.” Most students have more than one ISA.

- **ISAs That Will Be Canceled**

If you obtained one or more ISAs to cover tuition on or before July 12, 2018, the ISA(s) will be voided and canceled and you will owe nothing further on those ISAs.

If you qualify as a “Yellow Ribbon Claimant,” including by submitting a Claim Form confirming that you were eligible for the U.S. Department of Veterans Affairs Yellow Ribbon Program, all of your ISAs for tuition will be voided and canceled regardless of when you obtained them. The Claim Form indicates the qualifications for Yellow Ribbon Claimants, and it must be properly completed and submitted together with the required documentation in order to qualify for Yellow Ribbon Claimant benefits.

- **ISAs That Will Be Restructured**

All other ISAs will be restructured into a single New Agreement that is a no-interest, income-protected payment plan. The payment amount each month will not be based on how much income you earn, and instead will require fixed monthly payments spread out over 180 months (unless you choose a term of 60 or 120 months). The amount you are required to pay under the

New Agreement will be substantially less than what you could have to pay under your ISAs, as explained below.

The New Agreement will require you to make fixed monthly payments over a period of 180 months (or 60 or 120 months if you choose). The total amount you will have to pay under the New Agreement will be equal to the sum of the ISA Amounts for each of your ISAs that were not canceled, minus the total payments you previously made on any ISAs (canceled or not), multiplied by 0.90.

In addition, if your ISAs are restructured into a single New Agreement, you will have an option to pay off your New Agreement in full in exchange for a discount (the “Early Payoff Option”). Under the Early Payoff Option, you may, if you so choose, pay off the New Agreement by paying an amount equal to the sum of the ISA Amounts for each of your ISAs that was not cancelled pursuant to the Settlement, minus the total payments you previously made on any ISAs (cancelled or not), multiplied by 0.75 (i.e., 75% of the total ISA Amounts minus total payments made). You must pay the Early Payoff Amount within 90 days from the date the New Agreement was sent to you. The Settlement Administrator will notify you of the Early Payoff Amount and deadline for payment in a cover letter provided with the New Agreement. Any payments made on a New Agreement during the 90-day period will be credited against the Early Payoff Amount such that you may pay off a New Agreement by paying the Early Payoff Amount less the amounts of any such payments.

Like your ISAs, the New Agreement is income protected, meaning your obligation to make payments is suspended if you earn less than \$5,000 per month (equivalent to \$60,000 per year), and you provide the required income documentation to the servicer of your New Agreement. If you never make more than this amount, you will not have to make any payments.

The following examples show how this will work:

**Student 1** obtained two ISAs after July 12, 2018, as follows:

ISA 1 (tuition): \$30,000 ISA Amount, Payment Cap of \$75,000  
ISA 2 (stipend): \$18,000 ISA Amount, Payment Cap of \$54,000

Under these ISAs, Student 1 received \$48,000 in exchange for a share of her income up to a maximum amount (combined payment cap) of \$129,000. Student 1 previously made total payments of \$10,000. Under the Settlement, Student 1 would receive a New Agreement with a Principal Amount equal to \$34,200 ( $\$30,000 + \$18,000 - \$10,000$ , multiplied by 0.90).

**The maximum amount Student 1 would have to pay under the Settlement (\$34,200) is \$94,800 less than the maximum amount payable under her ISAs. The monthly payment would be \$190 per month for a 180-month term.** Student 1 can elect to pay off the New Agreement faster by selecting a shorter term with higher monthly payments (\$285 per month for a 120-month term, or \$570 per month for a 60-month term). Student 1 also has an Early Payoff Option allowing her to pay off the New Agreement by paying \$28,500 within 90 days after receiving her New Agreement ( $\$30,000 + \$18,000 - \$10,000$ , multiplied by 0.75).

**Student 2** obtained four ISAs, including two ISAs prior to July 12, 2018, as follows:

- ISA 1 (tuition): \$40,000 ISA Amount, Payment Cap of \$100,000 (pre-July 12, 2018)
- ISA 2 (stipend): \$13,500 ISA Amount, Payment Cap of \$40,500 (pre-July 12, 2018)
- ISA 3 (tuition): \$30,000 ISA Amount, Payment Cap of \$75,000
- ISA 4 (stipend): \$13,500 ISA Amount, Payment Cap of \$40,500

Under these ISAs, Student 2 received \$97,000 in exchange for a share of income up to a maximum amount of \$256,000. Student 2 previously made total payments of \$20,000. Under the Settlement, Student 2 would have his \$40,000 tuition ISA canceled, and receive a Payment Agreement with a Principal Amount equal to \$33,300 ( $\$13,500 + \$30,000 + \$13,500 - \$20,000$ , multiplied by 0.90).

**The maximum amount Student 2 would have to pay under the Settlement (\$33,300) is \$222,700 less than the maximum amount payable under his ISAs. The monthly payment would be \$185 per month for a 180-month term.** Student 2 can elect to pay off the New Agreement faster by selecting a shorter term with higher monthly payments (\$277.50 per month for a 120-month term, or \$555 per month for a 60-month term). Student 2 also has an Early Payoff Option allowing him to pay off the New Agreement by paying \$27,750 within 90 days after receiving his New Agreement ( $\$13,500 + \$30,000 + \$13,500 - \$20,000$ , multiplied by 0.75).

**To understand how this Settlement impacts your specific situation**, including the principal and monthly payment amounts of the New Agreement that will replace your ISAs if you do not opt out of the Settlement, **please visit [SETTLEMENT WEBSITE] or call [\_\_\_\_\_] with your unique identifier and password.** By visiting the Settlement Website, you can see how the Settlement will affect you (including which ISAs would be canceled, if any; the funding amounts, payment caps, and income share percentages for each ISA; the New Agreement's principal balance and monthly payment amounts for the New Agreement for such Settlement Class Member assuming a 180-month term; and the Early Payoff Amount).

**To dispute the amount you owe under this Settlement**, including but not limited to the amount owed pursuant to your New Agreement, you may e-mail or submit a letter concerning the dispute ("Dispute Notice") to the Settlement Administrator within 30 days of your receipt of any document provided by the Settlement Administrator providing a basis for the dispute. The Dispute Notice must contain your full name, address, physical or electronic signature, a description of the dispute, a proposed resolution of the dispute, and any supporting materials. The Administrator shall promptly provide to counsel for the Parties copies of all Dispute Notices it receives. The Parties and the Servicer (if applicable) shall meet and confer in an attempt to resolve the dispute within 14 days of receiving a Dispute Notice. Any such dispute the Parties are not able to resolve shall be submitted to the Settlement Administrator for resolution. The Settlement Administrator shall inform you and counsel for the Parties of the outcome within 14 days of receiving the dispute from the Parties for resolution. *All Settlement Class Members who do not timely submit a Dispute Notice waive all rights to challenge the administration of the Settlement.*

## **7. DO I HAVE A LAWYER IN THE CASE?**

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Yes. The Court appointed Melody L. Sequoia of The Sequoia Law Firm and William E. Kennedy of the Consumer Law Office of William E. Kennedy to represent the Settlement Class Members. Together, these lawyers are called “Class Counsel.” You do not need to hire your own lawyers because Class Counsel is working on your behalf. If you want your own lawyer, you have the right to hire your own attorney at your expense to enter an appearance on your behalf in this lawsuit.

## **8. HOW WILL THE LAWYERS BE PAID?**

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You do not have to pay Class Counsel. Class Counsel will ask the Court to order that the Defendants pay for their attorneys’ fees, costs and expenses of no more than \$450,000. This payment will not affect the benefits and payments available to Settlement Class Members. Class Counsel will file their motion for attorneys’ fees and expenses on or before the Class Notice Deadline. You may continue to check on the progress of Class Counsel’s request for attorneys’ fees, expense and service awards by visiting the website.

## **9. DO I NEED TO DO ANYTHING TO REMAIN A MEMBER OF THE SETTLEMENT CLASS?**

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You do not need to do anything to remain a member of the Settlement Class. You will remain a member of the Settlement Class unless you take steps to exclude yourself, described below. If you remain a member of the Settlement Class, you will be bound by any judgment entered whether or not it is favorable to the Settlement Class.

## **10. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

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If you do not want to remain a Settlement Class Member and participate in the Settlement, then you must send an exclusion request either (1) by mail to CPT Group, 50 Corporate Park, Irvine, CA 92606, or (2) by e-mail to the Settlement Administrator at \_\_\_\_\_. Your exclusion request will not be valid if submitted to any other address. Your exclusion request must (i) be physically or electronically signed by you (typing your name at the end of your email is sufficient for an electronic signature); (ii) include your full name, address, and (if known) Launch account number(s); and (iii) include a statement that you request to be excluded from the Settlement Class in *Aguocha, et al. v. Make School PBC, et al.* No request for exclusion will be valid unless all of this information is included, except for the Launch account number.

Your exclusion request must be e-mailed or postmarked by no later than \_\_\_\_\_, 2023. The Court will exclude from the Settlement Class any member who timely and properly requests exclusion. By electing to be excluded from the Settlement Class, you: (1) will not receive any settlement benefits if the settlement is approved; (2) will not be bound by any further orders or judgments entered for or against the Settlement Class; (3) will not be entitled to comment on or object to any proposed settlement; and (4) may present any claims you have against Defendants by filing your own lawsuit at your own expense.

## **11. WHAT IS THE SETTLEMENT APPROVAL PROCEDURE?**

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The Court will hold a settlement hearing on \_\_\_\_\_, 2023\_ at \_\_:\_\_, before the Honorable Ethan P. Schulman, in Department 304 of the Superior Court for the County of San Francisco, 400 McAllister Street, San Francisco, CA 94102, to consider whether the Settlement should be approved, as well as to consider an award of attorneys' fees and costs to Class Counsel and payment to the Settlement Class Representatives for their service as class representatives. You may attend the hearing, but you do not have to. If you exclude yourself from the Settlement Class, you are not entitled to object to the settlement, the award of fees and costs to Class Counsel, or the payment to the Settlement Class Representatives, and you may not be heard at the settlement approval hearing.

The Court has ordered that, pending determination of whether the Settlement should be granted final approval, all proceedings in this action will be stayed (or stopped), except as necessary to comply with the terms of the Settlement. During the stay, Settlement Class Members may not commence or continue prosecution of any action or proceeding involving the Released Claims against the Released Parties.

## **12. HOW DO I OBJECT TO THE SETTLEMENT?**

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If you decide to remain in the Settlement Class and you wish to object to the settlement, the award of fees and costs to Class Counsel, or the payments to the Settlement Class Representatives, you must submit your objection to the Settlement Administrator by either (1) mailing your objection to CPT Group, 50 Corporate Park, Irvine, CA 92606, or (2) e-mailing the Settlement Administrator at \_\_\_\_\_. Your objection must contain your full name, address, physical or electronic signature, and a description of your objection. Class Counsel is required to file your objection with the Court.

Objections must be e-mailed or postmarked no later than \_\_\_\_\_, 2023. If the Final Approval Hearing is rescheduled, Class Counsel will notify any Settlement Class Member who submitted an objection of the new date, time, and place of the hearing. If the Court approves the settlement, the approval will bind all members of the Settlement Class except those who have excluded themselves.

## **13. HOW DO I APPEAR AT THE SETTLEMENT HEARING?**

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Whether or not you file a written objection, you may still attend the settlement hearing, either in person, or through counsel hired at your own expense, to address the Court. The Court will hold a settlement hearing on \_\_\_\_\_, 2023\_ at \_\_:\_\_, before the Honorable Ethan P. Schulman, in Department 304 of the Superior Court for the County of San Francisco, 400 McAllister Street, San Francisco, CA 94102. Please check the Settlement Website for updates.

## **14. WHEN DOES THE TERM OF MY NEW AGREEMENT START?**

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If the Settlement is approved by the Court, and you did not exclude yourself from the Settlement Class, your New Agreement will be sent to you within 15 days after the Settlement has been

approved and become final. The term of your New Agreement will start 60 days after the Effective Date specified in the Settlement Agreement.

## **15. WHAT ARE THE RELEASED CLAIMS?**

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If the settlement is approved and you do not exclude yourself from the settlement, the following release will apply:

Except as to the rights and obligations provided for under the terms of this Agreement, the Settlement Class Representatives and the Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest and assigns, shall be deemed to have, and by operation of the Judgment shall have, as of the Effective Date, fully released and forever discharged Defendants and each and all of their present, former and future direct and indirect parent companies, affiliates, subsidiaries, lenders, investors, agents, successors, or predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of Defendants, and all of the aforementioned's respective officers, directors, employees, attorneys, representatives, shareholders, members, agents, vendors and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law (including, without limitation, under any state consumer-protection laws or laws prohibiting unfair or deceptive acts or practices), whether by constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that were alleged in the Third Amended Complaint or that were raised or could have been raised based upon the facts set forth in the Third Amended Complaint. For the avoidance of doubt, this release does not release the Released Parties from any claims arising from acts, omissions, or events occurring after the Effective Date, or that do not arise from the facts alleged in the Third Amended Complaint.

The foregoing release is not a general release, but rather is limited to claims arising in whole or in part from the facts alleged in the Third Amended Complaint. Accordingly, the Settlement Class Members waive any right to challenge the foregoing release based on Section 1542 of the California Civil Code, or any other applicable law relating to limitations on releases. California Civil Code Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

**16. IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANT FOR THE SAME THING LATER?**

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No. Unless you exclude yourself, you give up any right to sue Defendants and/or any of the Released Parties for the claims that this settlement resolves. If you have a pending lawsuit covering these same claims, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit.

**17. HOW DO I GET ADDITIONAL INFORMATION?**

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The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement. You can inspect many of the court documents connected with this case at [SETTLEMENTWEBSITE.COM] by using the links provided. Please login using your unique class member ID code and password.

If you want further information, you can contact the Settlement Administrator by calling (\_\_\_\_) \_\_\_\_-\_\_\_\_, sending an e-mail to \_\_\_\_\_@\_\_\_\_\_, or writing to \_\_\_\_\_ . Please refer to your unique class member ID code and password.

You can also obtain additional information by contacting Class Counsel, Melody L. Sequoia of The Sequoia Law Firm and/or William Kennedy of the Consumer Law Office of William E. Kennedy. Class Counsel's contact information is below:

Melody L. Sequoia  
**The Sequoia Law Firm**  
3000 El Camino Real, Suite 4-200  
Palo Alto, CA 94306  
[melody@sequoialawfirm.com](mailto:melody@sequoialawfirm.com)  
(650) 561-4791

William Kennedy  
**Consumer Law Office of William E. Kennedy**  
2797 Park Avenue, Suite 203  
Santa Clara, CA 95050  
[wkennedy@kennedyconsumerlaw.com](mailto:wkennedy@kennedyconsumerlaw.com)  
(408) 241-1000

You may seek the advice of your own attorney, at your expense, if you so desire.

You may also review the papers on file in the lawsuit, including the pleadings and other records in this litigation, during regular business hours at the Civil Records Division, The Civic Center Clerk's Office, 400 McAllister St., Room 103, San Francisco, CA 94102-4514 or online at <https://www.sfsuperiorcourt.org/online-services>.

**PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. DO NOT CONTACT YOUR SERVICER. TELEPHONE REPRESENTATIVES ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.**

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Hon. Ethan P. Schulman  
JUDGE OF THE SUPERIOR COURT



# **EXHIBIT F**

## CLAIM FORM

*Botcher, et al. v. Make School PBC, et al.*  
San Francisco County Superior Court Case No. CGC-21-592710

**Instructions:** Settlement Class Members may submit a Claim either electronically through the Settlement Website, or in writing. You must submit this Claim Form to the Settlement Administrator in order to receive Yellow Ribbon Claimant benefits or select a payment agreement term of less than 180 months. You also must submit a Claim Form if you need to update your contact information.

**The deadline for submitting your Claim Form is <<DATE>>.** You may submit your Claim Form through the Settlement Website or by U.S. Mail, a delivery service such as Federal Express, or e-mail to the Settlement Administrator at the following address:

*Botcher et al. v. Make School PBC* Settlement Administrator  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
Email: [info@cptgroup.com](mailto:info@cptgroup.com)  
Phone: (877) 705-5021

If you return the Claim Form via U.S. Mail or a delivery service, it is highly recommended that you use a method by which you can prove the Claim Form was delivered to the Settlement Administrator, such as Certified Mail, with return receipt requested. The parties, counsel for the parties, and the Settlement Administrator are not responsible for lost or undelivered mail. Settlement Class Members may also call or e-mail the Settlement Administrator to confirm receipt of this Claim Form.

### **Current Contact Information**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Launch Account Number (if known): \_\_\_\_\_

### **Payment Agreement Term Selection**

Unless canceled under the Settlement, your Make School income share agreements will be converted into a single Payment Agreement that is a no-interest, income-protected payment plan. The Payment Agreement will require fixed monthly payments spread out over a term of 60, 120, or 180 months. The monthly payment amounts for each option are available at [\[settlement website\]](#).

Please select the term length of your Payment Agreement. If you do not select a term length, your Payment Agreement will have a term of 180 months.

60 months

120 months

180 months

### **Yellow Ribbon Claimants**

If you are eligible for the U.S. Department of Veteran Affairs Yellow Ribbon Program, you may seek additional Settlement benefits by completing the form below and providing the required documentation.

#### **Section 1: Direct or Indirect Eligibility**

I am entitled to Post-9/11 GI Bill benefits based on my own military service.

I am entitled to Post-9/11 GI Bill benefits because I am the spouse or dependent child of someone else who is entitled to those benefits, and that person (the “Transferor”) transferred his or her benefits to me via a Transfer of Education Benefits approved by the United States Department of Defense.

Transferor name: \_\_\_\_\_

#### **Section 2: Eligibility for Yellow Ribbon Program**

I or the Transferor served at least 36 months on active duty (either all at once or with breaks in service) and was honorably discharged; or

I or the Transferor is an active duty service member who has served at least 36 months on active duty (either all at once or with breaks in service); or

I or the Transferor received a Purple Heart on or after September 11, 2001, and was honorably discharged after any amount of service; or

I or the Transferor served at least 30 continuous days (all at once, without a break) on or after September 11, 2001, and was discharged or released from active duty for a service-connected disability, or

I am a Fry Scholar.

#### **Section 3: Certification**

Before I entered into an income share agreement with Make School, Make School represented to me that the school offered, or would offer, the Yellow Ribbon program.

I declare under penalty of perjury under the laws of the United States of America that the immediately above statement and my answers to Sections 1 and 2 of the Yellow Ribbon section of this Claim Form are true and correct.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**In order to qualify as a Yellow Ribbon claimant, you must submit a copy of the applicable servicemember's United States Department of Defense form DD-214 together with this claim form. You will only receive Yellow Ribbon benefits if your claim is verified by your answers above and the form DD-214 you submit.**

For further information, visit [\[settlement website\]](#).

Please sign and date the claim form below.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

# **EXHIBIT G**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

ERIC BOTCHER and SAMUEL D. GALIZIA,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MAKE SCHOOL PBC f/k/a MAKE SCHOOL  
INC., MAKE SCHOOL ABC, LLC, MAKE  
SCHOOL ISA SPV, LLC, VEMO  
EDUCATION, INC., and DOES 1 through 10,

Defendants.

Case No. CGC-21-592710

**CLASS ACTION**

**[PROPOSED] FINAL APPROVAL  
ORDER**

Case Assigned for All Purposes to  
Hon. Ethan P. Schulman  
Dept. 302

1           THIS MATTER came before the Court for final approval of the proposed class settlement.  
2 The Court has considered all papers filed and the entire record of the proceedings in this matter  
3 and held a hearing on \_\_\_\_\_, at which time the parties and all other interested  
4 persons were afforded the opportunity to be heard in support of and in opposition to the proposed  
5 settlement. Based on the papers filed with the Court and presentations made to the Court at the  
6 hearing, and good cause appearing therefor,

7           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

8           1.       The definitions and provisions of the Agreement are hereby incorporated as though  
9 fully set forth herein. For purposes of this Order, capitalized terms shall have the meaning  
10 ascribed to them in the Agreement.

11          2.       This Court has jurisdiction over the subject matter of the Agreement with respect  
12 to and over all parties to the Agreement, including all members of the Settlement Class.

13          3.       The Court hereby approves the Settlement, including the settlement relief, and  
14 finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class  
15 Members, within the authority of the parties and the result of extensive arm's length negotiations.

16          4.       The Court finds that the Settlement Class Representatives and Class Counsel are  
17 competent and capable of exercising their respective responsibilities.

18          5.       Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator,  
19 CPT Group, has complied with the approved notice process as confirmed in its declaration filed  
20 with the Court. The Court finds that the form and method for notifying the Settlement Class  
21 Members of the Settlement and its terms and conditions was in conformity with this Court's  
22 Preliminary Approval Order, provided a means of notice reasonably calculated to apprise the  
23 Settlement Class Members of the pendency of the action and the proposed settlement, and thereby  
24 satisfied due process requirements, and constituted the best notice practicable under the  
25 circumstances, and due and sufficient notice to all Settlement Class Members entitled thereto.

26          6.       The Agreement, which has been filed with the Court and shall be deemed  
27 incorporated herein, and the proposed settlement contained therein, are finally approved and shall  
28 be consummated in accordance with the terms and provisions thereof, except as amended by any

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1 order issued by this Court. The Settlement Administrator shall void, cancel, terminate, or  
2 consolidate and replace each Settlement Class Member's ISAs in the manner specified in the  
3 Agreement.

4 7. Pursuant to California Code of Civil Procedure Section 382 and California Civil  
5 Code Section 1781, the Court certifies, for settlement purposes only, the following Settlement  
6 Class previously set forth in the Court's Preliminary Approval Order:

7 All Persons who obtained at least one income share agreement from  
8 Make School on or after June 1, 2015 that remained outstanding as  
9 of April 28, 2023. Excluded from the Settlement Class are the  
judges to whom the Action is assigned and the members of their  
staff or immediate family.

10 8. This Final Approval Order does not constitute an expression by the Court of any  
11 opinion, position, or determination as to the merit or lack of merit of any of the claims or defenses  
12 of the Settlement Class Representatives, the Settlement Class Members, or Defendants. Neither  
13 this Final Approval Order nor the Agreement is an admission or indication by Defendants of the  
14 validity of any claims in this action or of any liability or wrongdoing or of any violation of law.  
15 This Final Approval Order and the Agreement do not constitute a concession and shall not be  
16 used as an admission or indication of any wrongdoing, fault or omission by Defendants or any  
17 other person in connection with any transaction, event or occurrence, and neither this Final  
18 Approval Order nor the Agreement nor any related documents in this proceeding nor any reports  
19 or accounts thereof shall be offered or received in evidence in any civil, criminal or  
20 administrative action or proceeding, other than such proceedings as may be necessary to  
21 consummate or enforce this Final Approval Order, the Agreement and all releases given  
22 thereunder, or to establish the affirmative defenses of res judicata or collateral estoppel.

23 9. The Court hereby dismisses the claims asserted in the Action with prejudice,  
24 without costs as to any of the Parties against the others, except for such applications as may be  
25 made pursuant to the Agreement by Class Counsel and the Settlement Class Representatives.

26 10. (a) Except as to the rights and obligations provided for under the terms of this  
27 Agreement, the Settlement Class Representatives and the Settlement Class Members, on behalf of  
28 themselves and their respective heirs, executors, administrators, representatives, agents, attorneys,

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1 partners, successors, predecessors-in-interest and assigns, shall be deemed to have, and by  
2 operation of the Judgment shall have, as of the Effective Date, fully released and forever  
3 discharged Defendants and each and all of their present, former and future direct and indirect  
4 parent companies, affiliates, subsidiaries, lenders, investors, agents, successors, or predecessors in  
5 interest, or any financial institutions, corporations, trusts, or other entities that may hold or have  
6 held any interest (including, without limitation, any security interest) in any account or any  
7 receivables relating to any account, or any receivables or group of receivables, or any interest in  
8 the operation or ownership of Defendants, and all of the aforementioned's respective officers,  
9 directors, employees, attorneys, representatives, shareholders, members, agents, vendors and  
10 assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities,  
11 whether arising under local, state or federal law (including, without limitation, under any state  
12 consumer protection laws or laws prohibiting unfair or deceptive acts or practices), whether by  
13 constitution, statute, contract, common law or equity, whether known or unknown, suspected or  
14 unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or  
15 unliquidated, that were alleged in the Third Amended Complaint or that were raised or could have  
16 been raised based upon the facts set forth in the Third Amended Complaint. For the avoidance of  
17 doubt, this release does not release the Released Parties from any claims arising from acts,  
18 omissions, or events occurring after the Effective Date.

19 (b) Without limiting the foregoing, the Released Claims specifically extend to claims  
20 that the Settlement Class Representative and the Settlement Class Members do not know or  
21 suspect to exist in their favor at the time that the Settlement, and the releases contained therein,  
22 becomes effective. The Court finds that the Settlement Class Representative has, and the  
23 Settlement Class Members are deemed to have, knowingly waived California Civil Code Section  
24 1542 and/or any other applicable law relating to limitations on releases, solely with respect to the  
25 Released Claims.

26 (c) The Settlement Class Representatives understand and acknowledge, and each  
27 member of the Settlement Class shall be deemed to understand and acknowledge, the significance  
28 of these waivers of California Civil Code Section 1542 and any other applicable law relating to  
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1 limitations on releases. In connection with such waiver and relinquishment, the Settlement Class  
2 Representatives acknowledge, and all members of the Settlement Class shall be deemed to  
3 acknowledge, that they are aware that they may hereafter discover facts in addition to, or different  
4 from, those facts which they now know or believe to be true with respect to the subject matter of  
5 the Settlement, but that it is their intention to release fully, finally and forever all Released Claims  
6 against the Released Parties, and in furtherance of such intention, the release of the Released  
7 Claims will be and remain in effect notwithstanding the discovery or existence of any such  
8 additional or different facts.

9           11. In aid of this Court's jurisdiction to implement and enforce the settlement, the  
10 Settlement Class Representative and all Settlement Class Members and all persons purporting to  
11 act on behalf of Settlement Class Members are enjoined, directly, on a representative basis or in  
12 any other capacity, from asserting, commencing, prosecuting or continuing any of the Released  
13 Claims against Defendants or any of the other Released Parties in any action, arbitration or  
14 proceeding in any court, arbitral forum, or tribunal.

15           12. The Court finds that the program of Class Notice set forth in the Agreement and  
16 preliminarily approved by the Court was the best practicable notice under the circumstances. The  
17 Class Notice provided due and adequate notice of these proceedings and of the matters set forth  
18 therein, including the Agreement, to all parties entitled to such notice and satisfied the  
19 requirements of California Rule of Court 3.769 and the requirements of constitutional due  
20 process.

21           13. This Final Order and Judgment applies to all claims or causes of action settled  
22 under the terms of the Agreement, and shall be fully binding with respect to all Settlement Class  
23 Members who did not properly request exclusion. A total of \_\_\_\_\_ timely exclusion requests  
24 were received. Those persons requesting exclusion are identified on Exhibit A to this Order. The  
25 Court hereby excludes these persons from the Settlement Class and the Settlement.

26           14. Settlement Class Members were given an opportunity to object to the Settlement.  
27 After consideration of each of the objections, the Court hereby overrules such objections.  
28

1           15.     This Order is binding on all Settlement Class Members, except those individuals  
2 named on Exhibit A.

3           16.     As of the Effective Date, the Settlement Class Members are bound by the New  
4 Agreement attached hereto as Exhibit B. The New Agreement's term will start sixty (60) Days  
5 after the Effective Date. The term and related payment details of each New Agreement for each  
6 Settlement Class Member as set forth in the Agreement. Defendants Make School SPV and  
7 Make School ABC shall direct the Servicer to provide copies of these New Agreements to each  
8 Settlement Class Member by e-mail and U.S. Mail within fifteen (15) Days after the Effective  
9 Date.

10          16.     Without affecting the finality of this Final Approval Order in any way, the Court  
11 retains continuing jurisdiction over: (a) implementation of the Agreement and relief contemplated  
12 by the Agreement, until all acts agreed to be performed pursuant to the Agreement have been  
13 performed; and (b) all parties to this action and members of the Settlement Class for the purpose  
14 of enforcing and administering the Agreement.

15          17.     Neither this Final Approval Order nor the Agreement constitutes an admission or  
16 concession by Defendants of any fault, omission, liability, or wrongdoing. This Final Approval  
17 Order is not a finding of the validity or invalidity of any claims in this action or a determination  
18 of any wrongdoing by Defendants. The final approval of the Agreement does not constitute any  
19 opinion, position, or determination of this Court, one way or the other, as to the merits of the  
20 claims and defenses of the Settlement Class Representatives, Defendants, or the Settlement Class  
21 Members.

22          18.     In the event that the Agreement does not become effective in accordance with its  
23 terms, then this Final Approval Order and the Judgment shall be vacated, the Settlement Class  
24 shall be decertified (without affecting the Settlement Class Representatives' right subsequently to  
25 seek certification), the Second Amended Complaint will be reinstated, with the case proceeding  
26 on an individual (as opposed to class) basis, and the Agreement and all orders entered in  
27 connection therewith shall become null and void and of no further force and effect. In the event  
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1 of the foregoing, the reinstated Second Amended Complaint will relate back to the original  
2 Complaint for purposes of any applicable statute of limitations.

3 19. The Settlement is not conditioned upon the Court's approval of the plan of  
4 settlement relief or the fees, costs, expenses, and incentive awards sought by Class Counsel and  
5 the Class Representatives. Any appellate proceedings relating solely to such matters shall not  
6 delay the date on which this Final Approval Order becomes Final.

7 **IT IS SO ORDERED.**

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10 Dated: \_\_\_\_\_

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\_\_\_\_\_  
Hon. Ethan P. Schulman  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT H**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ERIC BOTCHER and SAMUEL GALIZIA,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MAKE SCHOOL PBC f/k/a MAKE SCHOOL  
INC., MAKE SCHOOL ABC, LLC, MAKE  
SCHOOL ISA SPV, LLC, VEMO  
EDUCATION, INC., and DOES 1 through 10,

Defendants.

Case No. CGC-21-592710

**CLASS ACTION**

**[PROPOSED] FINAL JUDGMENT**

Case Assigned for All Purposes to  
Hon. Ethan P. Schulman  
Dept. 302

1           WHEREAS, this matter came on regularly before this Court on \_\_\_\_\_, 2023,  
2 pursuant to California Rule of Court 3.769 and this Court’s earlier Order Preliminarily Approving  
3 Class Action Settlement, Conditionally Certifying Class, and Appointing Class Counsel  
4 (“Preliminary Approval Order”);

5           WHEREAS, for purposes of this Judgment, capitalized terms shall have the meaning  
6 ascribed to them in the Settlement Agreement (the “Agreement”) and the definitions and  
7 provisions of the Agreement are hereby incorporated as though fully set forth herein; and

8           WHEREAS, this Court granted final approval of the Settlement and entered the Final  
9 Approval Order on \_\_\_\_\_, 2023.

10           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

11           1.       Final Judgment in this matter is hereby entered in conformity with the Agreement,  
12 the Preliminary Approval Order, and the Final Approval Order.

13           2.       Pursuant to Final Approval Order, the Court certified, for settlement purposes  
14 only, the following Settlement Class:

15                   All Persons who obtained at least one income share agreement from  
16                   Make School on or after June 1, 2015 that remained outstanding as  
17                   of April 28, 2023. Excluded from the Settlement Class are the  
18                   judges to whom the Action is assigned and the members of their  
19                   staff or immediate family.

20           3.       All Settlement Class Members who have not timely and validly requested  
21 exclusion from the Settlement Class are bound by this Final Judgment and by the terms of the  
22 Agreement.

23           4.       This Judgment does not apply to Persons who timely requested exclusion from the  
24 Settlement Class (“Excluded Persons”). The list of Excluded Persons is attached as Exhibit A  
25 and incorporated by reference in this Final Judgment. Excluded Persons are not bound by this  
26 Final Judgment or the terms of the Agreement and may pursue their own individual remedies  
27 against Defendants. However, Excluded Persons are not entitled to any rights or benefits  
28 provided to Settlement Class Members by the terms of the Agreement.

          5.       Pursuant to the Agreement, and California Rules of Court 3.769(h) and 3.771, and  
without affecting the finality of this Final Judgment, the Court hereby enters judgment and retains

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1 continuing and exclusive jurisdiction over the Parties and all matters relating to this Action and/or  
2 the Settlement Agreement, including the administration, interpretation, construction, effectuation,  
3 enforcement and consummation of the Settlement Agreement and the Court's Orders in this  
4 Action.

5 6. Notice of this Judgment shall be given to the Settlement Class by posting this  
6 Judgment on [SETTLEMENTWEBSITE.com].

7 **IT IS SO ORDERED.**

8  
9  
10 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
11 Hon. Ethan P. Schulman  
12 JUDGE OF THE SUPERIOR COURT